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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Judgment reserved on: 05.02.2026.****Judgment delivered on: 07.04.2026.**

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W.P.(C) 1079/2025 &amp; CM APPL. 5331/2025

GODREJ AGROVET LTD

.....Petitioner

Through: Ms. Madhavi Divan, Senior Advocate  
with Mr. Santosh Krishnan, Ms.  
Sonam Anand, Mr. Ashwin Joseph &  
Mr. Atharva Kotwal, Advocates.

Versus

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA  
& ANR.

.....Respondents

Through: Mr. Rakesh Chaudhary, Advocate for  
R-1.  
Mr. Jivesh Kumar Tiwari & Ms.  
Samiksha, Advocates for R-2.

**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, C.J.****C H A L L E N G E**

1. Proceedings of this petition instituted under Article 226 of the Constitution of India question the validity of Note (c) appended to



Regulation 2.5.2 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (hereinafter referred to as the “Principal Regulations”), which has been substituted by the Food Safety and Standards (Food Products Standards and Food Additives) Fifth Amendment Regulations, 2021 (hereinafter referred to as the “Amending Regulations”).

2. By the impugned Note (c) it has been mandated that all the products listed in Regulation 2.5.2 shall comply with the requirements as given in Note (c), according to which, milk and meat producing animals excluding poultry, pig and fish shall not be fed with feed containing meat or bone meal including internal organs, blood meal and tissue of bovine or porcine origin materials except milk and milk products. It also mandates that commercial feeds shall comply with BIS (‘Bureau of Indian Standards’) standards as may be specified by the Food Safety and Standards Authority of India (Food Authority) established under Section 4 of the Food Safety and Standards Act, 2006 (hereinafter referred to as the “Act, 2006”).

3. The said amendment in Regulation 2.5.2 was introduced by Section 2(5) of the Amending Regulation, which is extracted here under:-

*“(5) for the note given under sub-regulation 2.5.2 related to Meat and Meat Products,*

*(a) the sentence ‘All the products listed in regulation 2.5.2 under clause 7, 8, 9, 10, 11, 12 shall comply with following requirements:’ shall be substituted with the following namely:*

*“All the products listed in regulation 2.5.2 shall comply with following requirements:”*

*(b) note (c) shall be substituted with the following namely:*



“(c) Milk and meat producing animals except poultry, pig and fish shall not be fed with feed containing meat or bone meal including internal organs, blood meal and tissues of bovine or porcine origin materials except milk and milk products. Commercial feeds shall comply with the relevant BIS standards, as may be specified by the Food Authority from time to time, and carry BIS certification mark on the label of the product.”

4. Note (c) which existed prior to its amendment is quoted here under:-

“Note: All the products listed in regulation 2.5.2 under clause 7, 8, 9, 10, 11, 12 shall comply with following requirements:

(a) Notifications or advisories issued under the Drugs and Cosmetics Rules, 1945 as well as by the Department of Animal Husbandry, Dairying and Fisheries concerning use in or consumption of veterinary drugs (antibiotics and growth promoters) by food producing animals or poultry birds must be complied with by the producers or marketers of meat and poultry products.

(b) Use of genetically modified techniques are prohibited for production of meat of animals or poultry birds.

(c) Meat producing animals except poultry shall not be fed with feed containing meat or bone meal including internal organs, blood meal and tissues of bovine or porcine origin materials except milk and milk products.

(d) Production or slaughtering or processing of animals for production of meat of porcine origin in the same production facilities where animals of bovine or ovine or caprine origin are produced or slaughtered or processed is prohibited.

(e) Where eligible meat products are intended to be imported, there should be appropriate inspection and certification procedures in place to ensure all the above compliances before grant of market access.”

5. Thus, prior to its amendment, requirements given in Note (c) applied



to products listed in Regulation 2.5.2 under clauses 7, 8, 9, 10, 11 & 12, whereas the amended clause (c) now applies to all the products listed in Regulation 2.5.2. As per the Regulation 2 of the Amending Regulations, the amendment has come into force on the date of its publication in the official gazette and food business operators have been mandated to comply with all the provisions of the Amending Regulations by 01.06.2022.

6. The petitioner which is a company incorporated under the relevant provisions of Companies Act, 1956 having its registered office at Mumbai and is engaged in manufacturing and marketing of animal feed, cattle feed, poultry feed etc., and other agricultural inputs, has also challenged by way of filing the instant writ petition, the direction dated 10.12.2019 issued by the Food Authority under Section 16(5) of the Act, 2006, whereby it was directed that commercial feeds/feed materials intended for food producing animals shall comply with the relevant BIS standards and shall not be manufactured, imported, distributed or sold except under the Bureau of Indian Standards Certification Mark. The impugned direction dated 10.12.2019 was to come into force after six months from the date of issue of the said direction.

7. The petitioner has also challenged the direction dated 27.01.2020 issued under Section 16(5) of the Act, 2006 whereby the direction issued earlier was superseded, however, it was decided that commercial feeds intended for cattle shall comply with the Bureau of Indian Standards (BIS) specification for compounded feeds for cattle and that on the date of enforcement of the direction dated 27.01.2020, such feeds for cattle shall carry a BIS certification mark on the label of the products. The direction



dated 27.01.2020 also provided that the said direction shall come into force after six months from the date of issue i.e. 27.01.2020. Challenge has also been made to another direction dated 01.01.2021 issued under Section 16(5) of the Act, 2006 whereby the timeline for compliance of the provisions of the earlier directions was extended further upto 01.07.2021.

### **STATUTORY PROVISIONS**

8. Before delving into the respective submissions made by the learned counsel for the parties in support and opposition of the prayers made in the writ petition, it is essential to note certain statutory provisions, which are as under:-

#### **I. CONSTITUTION OF INDIA- SEVENTH SCHEDULE**

##### **List I–Union List:**

*“52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.”*

##### **List II – State List**

*“15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.”*

[...]

*“24. Industries subject to the provisions of entries 7 and 52 of List I.”*

##### **Article 243G**

***“243G. Powers, authority and responsibilities of Panchayats***  
*Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be*



*necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—*

- (a) the preparation of plans for economic development and social justice;*
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”*

Eleventh Schedule

- 1. \*\**
- 2. \*\**
- 3. \*\**
- 4. Animal husbandry, dairying and poultry”*

## **II. FOOD SAFETY AND STANDARDS ACT, 2006 :-**

### **Long Title of the Act, 2006**

*“An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.”*

### **Section 2**

*“2. Declaration as to expediency of control by the Union. It is hereby declared that it is expedient in the public interest that the Union should take under its control the food industry.”*

### **Relevant extract of Section 3**

**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 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;”*

*(q) “food safety” means assurance that food is acceptable for human consumption according to its intended use;”*

*(zk) “primary food” means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman;*

*(zr) “sale” with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by whole sale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;”*

*(zz) “unsafe food” means an article of food whose name, substance or quality is so affected as to render it injurious to health:—*

*(i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances; or*

*(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or*

*(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or*

*(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or*

*(v) by addition of a substance directly or as an ingredient which it not*



*permitted; or*

*(vi) by the abstraction, wholly or in part, of any of its constituents; or*

*(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is;*

*or*

*(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or*

*(ix) by the article having been infected or infested with worms, weevils or insects; or*

*(x) by virtue of its being prepared, packed or kept under insanitary conditions; or*

*(xi) by virtue of its being misbranded or substandard or food containing extraneous matter; or*

*(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.*

## **Section 16**

### **16. Duties and functions of Food Authority.—**

*(1) It shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.*

*(2) Without prejudice to the provisions of sub-section (1), the Food Authority may by regulations specify—*

*(a) the standards and guidelines in relation to articles of food and specifying an appropriate system for enforcing various standards notified under this Act;*

*(b) the limits for use of food additives, crop contaminants, pesticide residues, residues of veterinary drugs, heavy metals, processing aids, mycotoxins, antibiotics and pharmacological active substances and irradiation of food;*

*(c) the mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems for food businesses;*

*(d) the procedure and the enforcement of quality control in relation to any article of food imported into India;*



- (e) the procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories;*
- (f) the method of sampling, analysis and exchange of information among enforcement authorities;*
- (g) conduct survey of enforcement and administration of this Act in the country;*
- (h) food labelling standards including claims on health, nutrition, special dietary uses and food category systems for foods; and*
- (i) the manner in which and the procedure subject to which risk analysis, risk assessment, risk communication and risk management shall be undertaken.*

*(3) The Food Authority shall also—*

- (a) provide scientific advice and technical support to the Central Government and the State Governments in matters of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition;*
- (b) search, collect, collate, analyse and summarise relevant scientific and technical data particularly relating to—*
  - (i) food consumption and the exposure of individuals to risks related to the consumption of food;*
  - (ii) incidence and prevalence of biological risk;*
  - (iii) contaminants in food;*
  - (iv) residues of various contaminants;*
  - (v) identification of emerging risks; and*
  - (vi) introduction of rapid alert system;*
- (c) promote, co-ordinate and issue guidelines for the development of risk assessment methodologies and monitor and conduct and forward messages on the health and nutritional risks of food to the Central Government, State Governments and Commissioners of Food Safety;*
- (d) provide scientific and technical advice and assistance to the Central Government and the State Governments in implementation of crisis management procedures with regard to food safety and to draw up a general plan for crisis management and work in close co-operation with the crisis unit set up by the Central Government in this regard;*
- (e) establish a system of network of organisations with the aim to facilitate a scientific co-operation framework by the coordination of activities, the exchange of information, the development and implementation of joint*



*projects, the exchange of expertise and best practices in the fields within the Food Authority's responsibility;*

*(f) provide scientific and technical assistance to the Central Government and the State Governments for improving cooperation with international organisations;*

*(g) take all such steps to ensure that the public, consumers, interested parties and all levels of panchayats receive rapid, reliable, objective and comprehensive information through appropriate methods and means;*

*(h) provide, whether within or outside their area, training programmes in food safety and standards for persons who are or intend to become involved in food businesses, whether as food business operators or employees or otherwise;*

*(i) undertake any other task assigned to it by the Central Government to carry out the objects of this Act;*

*(j) contribute to the development of international technical standards for food, sanitary and phyto-sanitary standards;*

*(k) contribute, where relevant and appropriate, to the development of agreement on recognition of the equivalence of specific food related measures;*

*(l) promote co-ordination of work on food standards undertaken by international governmental and non-governmental organisations;*

*(m) promote consistency between international technical standards and domestic food standards while ensuring that the level of protection adopted in the country is not reduced; and*

*(n) promote general awareness as to food safety and food standards.*

*(4) The Food Authority shall make it public without undue delay—*

*(a) the opinions of the Scientific Committee and the Scientific Panel immediately after adoption;*

*(b) the annual declarations of interest made by members of the Food Authority; the Chief Executive Officer, members of the Advisory Committee and members of the Scientific Committee and Scientific Panel, as well as the declarations of interest if any, made in relation to items on the agendas of meetings;*

*(c) the results of its scientific studies; and*

*(d) the annual report of its activities.*

*(5) The Food Authority may, from time to time give such directions, on*



*matters relating to food safety and standards, to the Commissioner of Food Safety, who shall be bound by such directions while exercising his powers under this Act;*

*(6) The Food Authority shall not disclose or cause to be disclosed to third parties confidential information that it receives for which confidential treatment has been requested and has been acceded, except for information which must be made public if circumstances so require, in order to protect public health.*

## **Section 92**

### **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) salaries and other conditions of service of officers and other employees of the Food Authority under sub-section (3) of Section 9;*
- (b) rules of procedure for transaction of business under subsection(5) of Section 11;*
- (c) other functions of the Central Advisory Committee under subsection(2) of Section 12;*
- (d) procedure of Scientific Committee and Panels under subsection(4) of Section 15;*
- (e) notifying standards and guidelines in relation to articles of food meant for human consumption under sub-section (2) of Section 16;*
- (f) procedure to be followed by Food Authority for transaction of business at its meetings under sub-section (1) of Section 17;*
- (g) making or amending regulations in view of urgency concerning food safety or public health under clause (d) of subsection(2) of Section 18.*
- (h) limits of additives under Section 19;*
- (i) limits of quantities of contaminants, toxic substance and heavy metals,*



- etc., under Section 20;*
- (j) tolerance limit of pesticides, veterinary drugs residues, etc., under Section 21;*
- (k) the manner of marking and labelling of foods under Section 23;*
- (l) form in which guarantee shall be given under sub-section (4) of Section 26;*
- (m) conditions and guidelines relating to food recall procedures under sub-section(4) of Section 28;*
- (n) regulations relating to functioning of Food Safety Officer under sub-section (5) of Section 29;*
- (o) notifying the registering authority and the manner of registration; the manner of making application for obtaining licence, the fees payable therefore and the circumstances under which such licence may be cancelled or forfeited under Section 31;*
- (p) the respective areas of which the Designated Officer shall be in-charge for food safety administration under sub-section (1) of Section 36;*
- (q) procedure in getting food analysed, details of fees, etc., under sub-section (1) of Section 40;*
- (r) functions, procedure to be followed by food laboratories under sub-section (3) of Section 43;*
- (s) procedure to be followed by officials under sub-section (6) of Section 47;*
- (t) financial regulations to be adopted by the Food Authority in drawing up its budget under sub-section (2) of Section 81;*
- (u) issue guidelines or directions for participation in Codex Meetings and preparation of response to Codex matters; and*
- (v) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”*

## **Section 97**

### **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, forfeiture 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 or 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 the commencement of this Act.*

**The Second Schedule**  
**(see Section 97)**

1. *The Prevention of Food Adulteration Act, 1954 (37 of 1954)*
2. *The Fruit Products Order, 1955*
3. *The Meat Food Products Order, 1973*
4. *The Vegetable Oil Products (Control) Order, 1947*
5. *The Edible Oils Packaging (Regulation) Order, 1998*
6. *The Solvent Extracted Oil, De oiled Meal and Edible Flour (Control) Order, 1967*
7. *The Milk and Milk Products Order, 1992*
8. *Any other order issued under the Essential Commodities Act, 1955(10 of 1955) relating to food.*



### **III. RELEVANT PROVISIONS OF BUREAU OF INDIAN STANDARDS ACT, 2016:-**

**2. Definitions.**— *In this Act, unless the context otherwise requires,—*  
[...]

**(17)** *“Indian Standard” means the standard including any tentative or provisional standard established and published by the Bureau, in relation to any goods, article, process, system or service, indicative of the quality and specification of such goods, article, process, system or service and includes—*

*(i) any standard adopted by the Bureau under sub-section (2) of section 10; and*

*(ii) any standard established and published, or recognised, by the Bureau of Indian Standards established under the Bureau of Indian Standard Act, 1986 (63 of 1986), which was in force immediately before the commencement of this Act;*

**(20)** *“licence” means a licence granted under section 13 to use a specified Standard Mark in relation to any goods, article, process, system or service, which conforms to a standard;’*

**(40)** *“Standard Mark” means the mark specified by the Bureau, and includes Hallmark, to represent conformity of goods, article, process, system or service to a particular Indian Standard or conformity to a standard, the mark of which has been established, adopted or recognised by the Bureau and is marked on the article or goods as a Standard Mark or on its covering or label attached to such goods or article so marked;*

#### **“16. Central Government to direct compulsory use of Standard Mark.—**

**(1)** *If the Central Government is of the opinion that it is necessary or expedient so to do in the public interest or for the protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices, or national security, it may, after consulting the Bureau, by an order published in the Official Gazette, notify—*

*(a) goods or article of any scheduled industry, process, system or service;*



or

(b) essential requirements to which such goods, article, process, system or service,

which shall conform to a standard and direct the use of the Standard Mark under a licence or certificate of conformity as compulsory on such goods, article, process, system or service.

*Explanation.—For the purpose of this sub-section,—*

(i) the expression “scheduled industry” shall have the meaning assigned to it in the Industries (Development and Regulation) Act, 1951 (65 of 1951);

(ii) it is hereby clarified that essential requirements are requirements, expressed in terms of the parameters to be achieved or requirements of standard in technical terms that effectively ensure that any goods, article, process, system or service meet the objective of health, safety and environment.

(2) The Central Government may, by an order authorise Bureau or any other agency having necessary accreditation or recognition and valid approval to certify and enforce conformity to the relevant standard or prescribed essential requirements under sub-section (1).”

**25. Power of Central Government to issue directions.**—(1) Without prejudice to the foregoing provisions of this Act, the Bureau shall, in the exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time: Provided that the Bureau shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

(3) The Central Government may take such other action as may be necessary for the promotion, monitoring and management of quality of goods, articles, processes, systems and services and to protect the interests



*of consumers and various other stakeholders and notify any other goods, articles, processes, systems and services for the purpose of sub-section (1) of section 16.*

#### **IV. RELEVANT PROVISION OF BUREAU OF INDIAN STANDARDS RULES, 2018:-**

**24. Indian Standards to be binding in certain cases.**—(1) *Save as otherwise provided in sub-rule (2), the Indian Standards are voluntary and their implementation depends on adoption by concerned parties.*  
(2) *An Indian Standard shall be binding if it is stipulated in a contract or referred to in a legislation or made mandatory by specific orders of the Government.*

#### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

9. Ms. Madhavi Divan, learned senior advocate representing the petitioner in support of the writ petition, has advanced the following arguments:-

***\* Impugned Regulation is beyond the scope of Act, 2006 and, therefore, it is ultra vires the Act:-***

10. It has been submitted by Ms.Divan that the impugned regulation has been made in purported exercise of the powers conferred on the Food Authority by Section 92(2)(e) read with Section 16 of the Act, 2006, which, according to Ms.Divan, do not permit the Food Authority to regulate any food product meant for cattle consumption and further that the Act having been enacted by the Parliament for laying down scientific standards for articles of food and to regulate their manufacture, storage, distribution, sale and import and to ensure availability of safe food for human consumption,



does not permit regulating cattle feed. In this view, the submission is that the impugned regulation is beyond the regulation making powers conferred on the Food Authority under the Act and therefore, it is *ultra vires* the Act, 2006.

11. Our attention in this regard has been drawn to the long title of the Act, 2006, which clearly provides that the Central Legislature has enacted the Act for regulating food for human consumption and not for regulating the food for cattle. The long title of the Act, 2006 has already been quoted above.

12. Referring to various provisions of the Act, 2006, it has been contended on behalf of the petitioner that the entire statutory scheme embodied in the Act, 2006 is in relation to food for human consumption. She has submitted that the expression 'food' has been defined in Section 3 (1) (j) of the Act, 2006, a perusal of which reveals that 'food' means any substance, whether processed or un-processed or partially processed, which is intended for human consumption. The submission is that the expression 'human consumption' occurs at two places in Section 3(1)(j), which defines 'food' and accordingly, wherever the expression 'food' occurs in the Act, it will have to be construed to mean food for human consumption which, thus, explicitly does not include any cattle feed.

13. Our attention has also been drawn to Section 2 of the Act, 2006, which declares expediency for the Union of India to take under its control the food industry, and 'food industry', according to the definition of the expression 'food' under Section 3 (1)(j) of Act, 2006, would mean food



industry engaged in manufacture, import, sale etc., of food meant for human consumption.

14. Similarly, while defining ‘consumer’ in Section 3 (1)(f) of the Act, 2006, it is provided that consumer would mean persons purchasing and receiving food in order to meet their personal needs and ‘food’ here would also, according to the petitioner, be confined to food for human consumption. Reference has also been given in this regard to the definition of the expression ‘food safety’ occurring in Section 3 (1)(q) of the Act, 2006, according to which food safety means assurance that food is acceptable for human consumption. Definition of the expressions ‘primary food’, ‘safe’ and ‘unsafe food’ occurring in Section 3 (1) (zk), (zr) and (zz) have also been referred to, which according to the petitioner, refer to food for human consumption.

15. It has further been argued by the learned senior counsel for the petitioner that Section 16 of Act, 2016 defines the duties and functions of the Food Authority according to which it is the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food and since the word ‘food’ has been defined in Section 3 (1)(j) to mean food for human consumption, as such the duties and functions entrusted to the Food Authority under Section 16 will extend to regulating and monitoring the manufacture, processing, distribution, sale and import of food for human consumption. It is thus submitted, that duties and functions of the Food Authority as defined in Section 16 of the Act, 2006 do not include the functions of the Food Authority to regulate or monitor the food which is



meant for feeding the cattle, and accordingly in exercise of the powers conferred under Section 16, the Food Authority was not empowered to make any regulations or any other provision regulating the manufacture, processing etc. of food article which is meant for feeding the cattle.

16. It is also the submission on behalf of the petitioner that regulation making power has been conferred upon the Food Authority by Section 92 of the Act, 2006 and since the impugned Regulation has been framed in purported exercise of powers conferred on the Food Authority under Section 92 (2)(e), therefore, the source of power to frame the impugned Regulation has to be traced to Section 92 (2)(e) of the Act, 2006.

17. In this regard, it has been stated that the provisions contained in Section 92 (2)(e) of the Act, 2006 empowers the Food Authority to make regulations for notifying standards and guidelines in relation to articles of food meant for human consumption under Section 16 (2) of the Act, 2006. It is thus contended that the expression 'food meant for human consumption' specifically occurs in Section 92 (2)(e) of the Act, 2006 and, therefore, any regulation notifying standards and guidelines in relation to any article of food, which is meant for feeding the cattle, will be beyond the power conferred on the Food Authority under Section 92 (2)(e) of the Act, 2006.

18. The provisions of Section 97 of the Act, 2006 has also been referred to by Ms.Divan to submit that the 'repeal and savings' clause contained therein repeals certain Enactments and Orders as enlisted in the Second Schedule appended to the Act, 2006 and a perusal of the Enactments and Orders enlisted in the Second Schedule reveal that all the said provisions



related to regulating the food meant for human consumption.

19. In sum and substance, the argument is that since the impugned regulation, specifically Note (c), requires compliance of certain requirements in relation to food meant for consumption of milk and meat producing animals and not for any food article meant for human consumption as such, the requirements mentioned in the said Note, which are mandated to be fulfilled by food business operators are clearly beyond the regulating powers of the Food Authority as conferred by the Act, 2006 and, therefore, the same is not tenable. It is also the submission on behalf of the petitioner that the entire scheme of the Act, 2006 provides for ensuring food safety in respect of the food articles meant for human consumption and not for regulating the cattle feed and, therefore, any provision made by the Food Authority by framing Regulations in relation to cattle feed is *ultra vires* of the Act, 2006.

**\* *Food Authority could not have found an indirect way for achieving something, which could not be achieved by it directly:-***

20. Ms.Divan has drawn our attention, in support of the said submission, to the directions dated 10.12.2019 issued by the Food Authority in purported exercise of its power under Section 16 (5) of the Act, 2006 and has submitted that the said direction was issued by the Food Authority without appropriate amendments to the Act, 2006, though the Authority itself has stated in the said direction dated 10.12.2019 that it was examining the possibility of framing feed regulations supported by appropriate amendments to the Act. It is, thus, the submission on behalf of the petitioner



that even the Food Authority was well aware that the impugned Regulation could not be framed by it without appropriately amending the Act, 2006, however, the Regulations have been issued without making any amendment in the Act, that is to say, the object which is sought to be achieved by promulgating the impugned Regulation could have been achieved only after amendment in the Act, 2006 and not otherwise.

21. Paragraph 2 of the direction dated 10.12.2019 is extracted herein below:-

*2. In this context, the Food Safety and Standards Authority of India (FSSAI) is examining the possibility of framing feed regulations, supported with appropriate amendments to the Act. Meanwhile, in order to address the issue on an interim basis, it has been decided that commercial feeds/feed materials intended for food producing animals shall comply with the relevant BIS standards and shall not be manufactured, imported, distributed and sold except under the Bureau of Indian Standards Certification Mark.”*

22. Ms.Divan has, accordingly, argued that by enacting the impugned Regulation, specifically Note (c), the Food Authority has resorted to finding an indirect way of framing the regulation though the object sought to be achieved by impugned Regulation could have been achieved only by resorting to a direct way of amending the Act, 2006 and not otherwise. Thus the submission is that even the Food Authority was of the opinion that the impugned Regulation could not be issued without providing, by way of amendment, the enabling provisions under the Act, 2006 and therefore impugned regulation is not tenable in law.

23. In this regard, reliance has been placed on *Sant Lal Gupta & Ors. v.*



*Modern Co-operative Group Housing Society Limited & Ors. [(2010) 13 SCC 336], Nazir Ahmad v. King Emperor [AIR 1936 PC 253] and Ramchandra Keshav Adke v. Govind Joti Chavare, (1975) 1 SCC 559* to impress upon the Court that where power is given to do a certain act in a certain way, such act must be done in that way alone or not at all and that any other method of performance of such an act is necessarily forbidden.

**\* *Food Authority could not have made BIS standard mandatory, which is otherwise voluntary:-***

24. Referring to Section 16 (1)(b) of the Bureau of Indian Standards Act, 2016 (hereinafter referred to as the “BIS Act, 2016”), it has been contended on behalf of the petitioner that in a situation where the Central Government forms an opinion that it is necessary or expedient so to do in public interest or for protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices or national security, the Central Government after consulting the Bureau of Indian Standards may by an order to be published in the Official Gazette notify essential requirements to which such goods, articles or processes or systems or services shall conform to a standard and direct the use of the Standard Mark under a license or certificate of conformity as compulsory on such goods or articles or processes or systems or services.

25. It has, thus, been argued that the impugned Note (c), which provides that commercial feeds shall comply with the relevant standards as may be specified by the Food Authority from time to time and carry BIS certification mark on the label, is illegal in absence of any notification to be issued under Section 16 (1)(b) of the BIS Act, 2016 notifying essential



requirements to which any food item shall be required to conform to a BIS Standard, which would be making use of the Standard Mark under a license, as compulsory.

26. Ms.Divan has, thus, contended that mandating compliance with the relevant BIS standards is the function of the Central Government, which emanates from Section 16 of the BIS Act, 2016 and not from either Section 16 or Section 92 (2)(e) of the Act, 2006. She has further argued that there is no notification issued in terms of Section 16 (1)(b) under BIS Act, 2016 and in absence whereof, by framing a subordinate legislature in the form of the impugned Regulation, it could not be made mandatory by the Food Authority that commercial feed shall comply with the relevant BIS standard or the commercial feeds shall carry BIS Certification Mark on the label of the food product. In this regard, it has also been submitted on behalf of the petitioner that compliance with the BIS standard, as established by the Bureau under the relevant provisions of BIS Act, 2016, is voluntary unless the same is made mandatory/compulsory by way of issuing a notification under Section 16 of the BIS Act by the Central Government.

27. Reference in this regard has also been made to the provisions contained in Rule 24 of the Bureau of Indian Standards Rules, 2018 (hereinafter referred to as the “BIS Rules, 2018”) framed under Section 38 of the BIS Act, 2016, which provides that the Indian standards are voluntary and, their implementation depends upon the adoption by the concerned parties except as otherwise provided in sub-Rule 2 of Rule 24. Rule 24 (2) clearly states that an Indian standard shall be binding if it is stipulated in a contract or referred to in a Legislation or made mandatory by specific orders



of the Government. The submission is that as per Rule 24(2), any Indian standard can be said to be binding only if such a stipulation is found in a contract or is referred to in a Legislation or is made mandatory by means of an order of the Central Government and since the impugned Regulation issued by the Food Authority is neither a contract nor a Legislation and nor can amount to an order of the Central Government, the same is even in violation of Rule 24 (2) of the BIS Rules, 2018.

28. Pithily stated the argument is that unless and until a notification under Section 16 (1) of BIS Act, 2016 is issued by the Central Government making any standard mandatory or compulsory, BIS standard could not be made compulsory by framing the regulations under the Act, 2006 and, therefore, the Food Authority has resorted to an indirect mode of making the BIS standard compulsorily applicable to commercial feed, which is legally impermissible.

***\* In view of Entry 15 of List II–State List of Seventh Schedule of the Constitution of India, it is the State Government which could make law regulating preservation, protection and improvement of stock and prevention of animal disease etc., and not the Central Government.***

29. Ms.Divan has drawn our attention to Entry 15 of List II of Seventh Schedule of the Constitution of India and has stated that any Legislation on the subject relating to prevention, protection and improvement of livestock and prevention of animal disease, veterinary training and practice is the preserve of the State Legislature and since impugned Note (c) introduced by the amending Regulation is in relation to protection of livestock as such, the same is beyond competence of either the Central Government or any Central



Government Authority including the Food Authority.

**\* *The directions dated 10.12.2019, 27.01.2020 and 01.01.2021 issued by the Food Authority are beyond its competence.***

30. Referring to the impugned directions dated 10.12.2019, 27.01.2020 and 01.01.2021, it has been submitted on behalf of the petitioner that the said directives have been issued repeatedly in exercise of the powers conferred on the Food Authority under Section 16 (5), however, the same are beyond the legal competence of the Authority for the reason that the impugned directive makes it mandatory for the commercial feeds/feed material intended for food producing animals to comply with the relevant BIS standards, which is not only impermissible under Section 16 (5) of the Act, 2006, but such provision can be made mandatory only by the Central Government by issuing a notification under Section 16 of the BIS Act, 2016. The submission in this regard is that Section 16 (5) of the Act, 2006, though empowers the Food Authority to give such directions on matters relating to food safety and standards from time to time to the Commissioner of Food Safety who shall be bound by such direction, however, the scope of issuing direction under Section 16 (5) will be confined to the matters which are within the scope of the Act, 2006 and not beyond it. In other words, it has been stated that since the scheme of the Act, 2006 is in relation to regulating the food items for human consumption and not for cattle feed, the power of Food Authority under Section 16 (5) can be exercised only in relation to issuing direction confined to food items meant for human consumption and not for those which are meant for feeding the cattle.



**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

31. The counter affidavit on behalf of the respondent nos.1 and 2 has been filed opposing the writ petition. It has been argued by learned counsel representing the respondents that the Act, 2006 was enacted for providing a single reference point for all matters relating to food safety and standards and its regulation and enforcement. It has further been argued that Section 16 (1) of the Act, 2006 empowers the Food Authority to regulate and monitor the distribution and sale of food to ensure public health and safety whereas, Section 16 (2) vests necessary powers with the Food Authority to set standards and guidelines in relation to food articles, specifying the system for enforcement of such standards as well as food labelling standards.

32. Reference has been made to a D.O. letter dated 05.09.2019 sent by the Department of Animal Husbandry and Dairying of the Government of India to the Food Authority, raising the concerns related to import of dairy products from various countries and stating that milk product containing animal rennet should be labelled and further that a declaration on Sanitary Import Permit may be required to be made that source animals have never been fed with feeds produced from internal organs, blood meal and disease of ruminant origin. Pursuant to the said letter of the Department of Animal Husbandry and Dairying, a meeting of the officials from the said Department, Ministry of Commerce and Food Authority was held and, accordingly, directions dated 10.12.2019 had been issued under Section 16 (5) of the Act, 2006 to address the said concern expressed in the D.O. letter of the Department of Animal Husbandry and Dairying dated 05.09.2019.



33. It is also the case set up by the respondents that the impugned Regulation was issued only after inviting the comments and suggestions from the general public by issuing a draft regulation with a view to provide for requirements in respect of animal feed, however, no comments/suggestions or objections were ever received from the petitioner against the draft notification and, therefore, the draft notification was approved by the Food Authority in its 33<sup>rd</sup> meeting and, accordingly, the impugned Regulation has been notified in the official gazette on 15.11.2021.

34. Learned counsel for the respondents has also drawn our attention to a letter dated 01.01.2025, which contains the reply sought by the petitioner to a couple of queries made by it under Right to Information Act, 2005. It has been submitted that the queries made under the Right to Information Act, 2005 by the petitioner were whether BIS Regulation is mandatory for cattle feed manufacturing plants and whether cattle feed can be sold without any BIS license, BIS logo, public certification or Monogram.

35. The reply given to the said queries, as contained in the letter dated 01.01.2025 of the Bureau of Indian Standards, states that cattle feed as per IS 2052:2023 is under mandatory BIS certification, details of which are available in public domain and can be accessed on the website address of Bureau of Indian Standards, which is given in the reply itself.

36. At this juncture itself we may, however, note that though, if the website as given in the reply dated 01.01.2025 under the Right to Information Act, 2005 is visited, the cattle feed is found where BIS certification is mandatory, however, the said website does not contain any



such corresponding notification under Section 16 of the BIS Act, 2016. The respondents have also not enclosed any notification under Section 16 of the BIS Act, 2016 for making the BIS standard compulsory for animal feed.

### **DISCUSSION AND FINDINGS**

**\* *If the impugned Regulation is ultra vires the Act, 2006:-***

37. The sheet-anchor of argument challenging the impugned Regulation on behalf of the petitioner is that the impugned Regulation is *ultra vires* the Act, 2006. In other words, the submission is that the impugned Regulation is beyond the scope and power of the Food Authority under the Act, 2006.

38. Hon'ble Supreme Court, in *State of Tamil Nadu & Anr. v. P Krishnamurthy & Ors. (2006) 4 SCC 517*, while laying down the tests for finding out as to whether a subordinate Legislation is valid, has discussed various grounds available for such a challenge. The Apex Court has observed that, while considering validity of a subordinate Legislation the Court will have to consider the nature, object and scheme of the enabling Act and also the area over which power has been delegated and then decide whether the subordinate Legislation conforms to the Parent Statute. It has further been held that in a case where subordinate Legislation is directly inconsistent with the provision of the statute, the task of the Court becomes simple and easy, however, where the contention is that the inconsistency or non-conformity of the subordinate Legislation is not with reference to any specific provision of the enabling Act but with the object and scheme of the Parent Act, the Court should proceed with caution before declaring any subordinate Legislation invalid.



39. Recognizing the principle that the subordinate Legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature, it has been held by Hon'ble Supreme Court in *P Krishnamurthy & Ors. (supra)*, referring to *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, 1985 (1) SCC 641*, that subordinate Legislation can be challenged on any of the grounds on which a plenary Legislation is questioned and in addition, it may also be challenged on the ground that it does not conform to the statute under which it is made. The Apex Court further held that such subordinate Legislation may also be questioned on the ground that it is contrary to some other statute. The underlying principle is that subordinate Legislation must yield to plenary Legislation. Besides, the subordinate Legislation can also be challenged on the ground of unreasonableness, not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.

40. Summing up the grounds on which the subordinate Legislation can be challenged, the Hon'ble Supreme Court in paragraph 15 of the report in *P Krishnamurthy & Ors. (supra)* has observed as under:-

*“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*

- (a) Lack of legislative competence to make the subordinate legislation.*
- (b) Violation of fundamental rights guaranteed under the Constitution of India.*
- (c) Violation of any provision of the Constitution of India.*
- (d) Failure to conform to the statute under which it is made or*



*exceeding the limits of authority conferred by the enabling Act.*

*(e) Repugnancy to the laws of the land, that is, any enactment.*

*(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”*

41. Paragraphs 16 & 17 of ***Krishnamurthy & Ors. (supra)*** is also relevant to be quoted, which read as under:-

*16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.*

*17. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75)*

*“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.”(emphasis supplied)”;*



42. Reference can also be made to the judgment in *Kerala State Electricity Board & Ors. v. Thomas Joseph alias Thomas M.J. & Ors.* (2023) 11 SCC 700, wherein it has been observed by Hon'ble Supreme Court that delegated Legislation has come to stay as a component of modern administrative powers and, therefore, the question is not whether there ought to be delegated Legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the administration is exercised properly. The Court further observed that the subordinate Legislation has to necessarily function within the purview of the statute and that it should not travel beyond the purview of the Parent Act. It has been also observed that if any piece of delegated Legislation travels beyond the purview of the Parent Act, it will be *ultra vires* and cannot be given effect to.

43. Paragraph 71 of the judgment in *Kerala State Electricity Board (supra)* is apposite to reproduce here, which reads as under:-

*“71. Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. The doctrine of ultra vires envisages that a rule-making body must function within the purview of the rule-making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel*



*beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect. Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.”*

44. In *Naresh Chandra Agrawal v. Institute of Chartered Accountants of India & Ors.* [(2024) 13 SCC 241] the Hon’ble Supreme Court has, after a thorough review of the law relating to challenge to subordinate/delegated Legislation, laid down certain principles for adjudging its validity. The Apex Court in *Naresh Chandra Agrawal (supra)* has considered in detail the principle relating to “generality versus enumeration” in relation to certain clauses occurring in various Legislations permitting framing of delegated/subordinate Legislations. The Court has considered various such clauses occurring in particular section of such statutes, such as ‘to carry out the provisions of this Act’ or ‘to carry out the purposes of this Act’ or ‘in particular and without prejudice to the generality of the foregoing power’.

45. The Hon’ble Supreme Court has, thus, noticed the key principle by interpreting from interpretation of such clauses, according to which even if specific topics are not explicitly listed in the statute, the formulation of rules can be justified if it falls within the general power conferred, provided it stays within the overall scope of the Act.

46. Paragraph 28 of the judgment in *Naresh Chandra Agrawal (supra)* is



extracted herein below:-

*“28. A key principle emerges from this interpretation: even if specific topics are not explicitly listed in the statute, the formulation of rules can be justified if it falls within the general power conferred, provided it stays within the overall scope of the Act. This mode of interpretation has been categorised as the “generality versus enumeration” principle in some precedents of this Court [ See, BSNL v. TRAI, (2014) 3 SCC 222; King Emperor v. Sibnath Banerji, 1945 SCC OnLine PC 29 : (1944-45) 72 IA 241 : AIR 1945 PC 156; Afzal Ullah v. State of U.P., 1963 SCC OnLine SC 76 : AIR 1964 SC 264; Rohtak & Hissar Districts Electric Supply Co. Ltd. v. State of U.P., 1965 SCC OnLine SC 75 : AIR 1966 SC 1471; K. Ramanathan v. State of T.N., (1985) 2 SCC 116 : 1985 SCC (Cri) 162; D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20] . This delicate balance between specificity and generality in legal delegation is crucial for effective governance and adaptability to evolving legal landscapes.”*

47. As observed above ***Naresh Chandra Agrawal (supra)*** has at length referred to various past precedents and after discussing the same summarised certain legal principles that are relevant for adjudicating cases where subordinate Legislation is challenged on the ground of the same being ultra vires the Parent Act. The said summary can be found in paragraphs 37 of the report, which is extracted herein below:-

*“37. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being “ultra vires” the parent Act:*

*37.1. The doctrine of ultra vires envisages that a rule-making body must function within the purview of the rule-making authority, conferred on it by the parent Act. As the body making*



*Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*

*37.2. Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

*37.3. If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.*

*37.4. Delegated rule-making power in statutes generally follows a standardised pattern. A broad section grants authority with phrases like “to carry out the provisions” or “to carry out the purposes”. Another sub-section specifies areas for delegation, often using language like “without prejudice to the generality of the foregoing power”. In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, courts have applied the “generality vs. enumeration” principle.”*

*37.5. The “generality vs. enumeration” principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra*



*vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.*

*37.6. The delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.*

*37.7. However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*

*37.8. If the rule-making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act. “*

48. Keeping in view the above principles in mind, we may now proceed to consider the submission advanced on behalf of the petitioner challenging the impugned Regulation. As already noticed above, from a perusal of the provisions of the Act, 2006 and also what the Long Title of the said Act provides for, what we notice is that the Parliament has enacted the Act, 2006 for the purposes of regulating, manufacture, storage, distribution, sale and import of food for human consumption to ensure availability of safe and wholesome food. In the Act, everywhere the expression ‘food’ occurs,



which has been explicitly defined in Section 3 (1) (j) according to which ‘food’ means any substance, processed or partially processed or unprocessed, which is intended for human consumption. Such ‘food’ for human consumption, according to the definition clause, will include primary food, genetically modified or engineered food or food containing some ingredients, infant food, packaged drinking water, alcoholic drinks, chewing gum and any other substance used into the food during its manufacture, preparation or treatment. The definition clause clearly reveals that ‘*it does not include any animal feed*’. It also does not include plant prior to harvesting, drugs and medicinal products, cosmetic, narcotic or psychotropic substances.

49. At various places in the Act the expressions like ‘food safety’, ‘primary food’, ‘unsafe food’, ‘sale of food’ etc., occur, however such expressions, in our opinion, could not include any feed or food not meant for human consumption such as cattle feed or animal feed. What has been provided in Note (c) occurring in the impugned Regulation is that all the products listed in Regulation 2.5.2 shall comply with the requirement that milk and meat producing animals except poultry, pig and fish shall not be fed with feed containing meat or bone meal including internal organs, blood meal and tissues of bovine or porcine origin material except milk and milk products. The impugned Note (c) thus regulates feed to be given to milk and meat producing animals. In other words it regulates the cattle or animal feed, which is clearly outside the scope of the Act, 2006 in the sense that the very scheme of the Act is such that the provisions therein can be put to service only to regulate the food for human consumption and not the feed for



the use of cattle or animals.

50. Further, we also notice that Note (c) in the impugned Regulation also requires that commercial feed shall comply with the BIS standards as may be specified by the Food Authority from time to time and shall carry BIS certification mark on the label of the product. Such prescription, in our opinion, is also beyond the scope of the Act, 2006 for the reason that the provisions contained in Bureau of Indian Standards Act, 2016 provide that compliance with the relevant BIS standards is voluntary and not mandatory whereas the impugned Regulation makes the same to be mandatory.

51. It is also worthwhile to notice at this juncture itself, that Rule 24 of the BIS Rules, 2018 clearly state that Indian Standards are voluntary and their implementation depends on adoption by concerned parties and further that it shall be binding only if it is stipulated in a contract or is referred to in a Legislation or is mandatory by a specific order of the Government. The respondents have not been able to produce before the Court any order issued by the Central Government under the provisions of the BIS Act, 2016 or the Rules made thereunder making BIS standards mandatory so far as the commercial feed is concerned.

52. We may also refer to Section 25 of the BIS Act, 2016 which provides that the Bureau shall be bound by the directions issued by the Central Government for exercise of its power and performance or its function under the BIS Act, 2016. However, no such direction issued by the Central Government under the BIS Act, or Rules, as already observed above, has been placed before the Court, whereby the BIS standards in respect of



commercial feed has been made mandatory.

53. We may also refer to the duties and functions of the Food Authority as referred to in Section 16 of the Act, 2006. The said provision entrusts the Food Authority with various functions and cast duties to regulate and monitor manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. The expression 'food' occurring here has to be understood in the context of how Section 3 (1)(j) of the Act, 2006 defines this expression, according to which food would mean a substance for human consumption. In absence of specific inclusion of any substance as food for animal consumption or cattle feed or feed for animal in the definition clause, in our considered opinion, all the functions of the Food Authority vested in Section 16 and duties cast on it are in relation to food for human consumption and will not include the animal or cattle feed.

54. The Regulation making powers are conferred upon the Food Authority under Section 92 of the Food Act, 2006. While making the impugned Regulation, reference has been given by the Food Authority to Section 92 (2)(e) of the Act, 2006 according to which the Food Authority may make Regulations with previous approval of the Central Government for notifying standards and guidelines in relation to articles of food meant for human consumption, under sub-Section 2 of Section 16.

55. The occurrence of the expression 'food meant for human consumption' specifically in Section 92 (2)(e) of the Act, 2006 in our opinion, would not permit the Food Authority to make regulations notifying standards and guidelines in relation to articles of food beyond human



consumption. Any regulation, thus, can be made under Section 92 (2)(e) of the Act, 2006 only in relation to food for human consumption which would not include cattle or animal feed.

56. Thus having regard to the scheme of the Act, 2006, the purpose for which it has been enacted by the Central Legislature and also the extent of Regulation making power available under Section 92 of the Act, 2006 and the duties and functions of the Food Authority under Section 16 of the said Act, what we conclude is that any Regulation made by the Food Authority regulating cattle feed or animal feed would travel beyond the scope of the Act, 2006, which is the enabling Legislation. The impugned Regulation, specifically Note (c), thus not only is beyond the scheme and scope of the Act, 2006 but it also clearly appears to be inconsistent with the enabling Legislation for the reason that enabling Legislation does not confer any authority or power to the Food Authority to make any such Regulation where regulation of cattle feed and animal feed is sought.

57. As far as requirement of compliance with the relevant BIS standards by commercial feed is concerned, Rule 24 of the BIS Rules, 2018 specifically provides that the Indian Standards are voluntary and their implementation is dependent upon adoption of concerned parties. Sub-rule 2 of Rule 24 provides that Indian Standard will be binding only if it is stipulated in a contract or referred to in a Legislation or may mandatory by specific orders of the Government. Section 25 of BIS Act, 2016 empowers the Central Government to issue directions, which is to be mandatorily followed by the Bureau. The respondents have not been able to produce or furnish any such order issued by the Central Government in terms of either



Section 16 (1)(b) or 25 of the BIS Act, 2016 or Rule 24 of the Rules framed thereunder, whereby BIS standards has been made mandatory to be followed in case of commercial feeds.

58. An attempt in this regard was made by the respondents to submit that the BIS standards in respect of commercial feed is binding by referring to the information given under the Right to Information Act, 2005 *vide* letter dated 01.01.2025 wherein in respect of a query, it was informed by the Bureau of Indian Standards to the petitioner that cattle feed as per IS 2052:2023 is under mandatory BIS certification. The reply further states that details of products under mandatory/compulsory BIS certification is available in public domain and can be accessed on the address of the website given thereunder. However, we may note that the respondents have completely failed to produce any such detail which is allegedly available on the address of the website given in the reply under the Right to Information Act *vide* letter dated 01.01.2025 depicting any order of the Government of India issued either under Section 16 (1)(b) or 25 of the BIS Act, 2016 or under the Rules framed thereunder making observance of BIS Standard compulsory for commercial feed.

59. Thus in absence of any order issued by the Central Government referable to Section 16 (1)(b) or 25 of the BIS Act, 2016 or Rule 24 of the BIS Rules, 2018, as clearly provided in Rule 24 (1) of the BIS Rules the Indian Standards are voluntary and, therefore, making it mandatory without any order passed by the Central Government under the BIS Act, 2016 or the Rules, in our opinion is not tenable. Such mandate of observing the BIS standard in respect of cattle feed is not mandatory also for the reason that



Regulation making powers under Section 92 of the Act, 2006 or Section 16 of the said Act does not permit the Food Authority to make any Regulation outside the purview of Enabling Act, namely the Act, 2006. Making any BIS standard mandatory is the function of the Central Government and the Bureau created under the BIS Act, 2016 and in absence of any such direction of the Central Government either under the BIS Act, 2016 or BIS Rules, 2018, in our opinion, it was not competent for the Food Authority to have made the requirement of BIS standard mandatory to be followed in case of commercial feed for the reason that the Food Authority lacks any such jurisdiction to make any such Regulation.

60. We have already noticed the law laid down in *Naresh Chandra Agrawal (supra)* and *P Krishnamurthy & Ors. (supra)* wherein it has clearly been held that the Rule making body must function within the purview of the Rule making Authority conferred on it by the Enabling Act and that such a body is not possessed of any inherent power of its own to make rules but it derives such power only from the statute and, therefore, it must necessarily function within the purview of the statute. In other words the delegated Legislation should not travel beyond the purview of the enabling Parent Act. If the impugned Regulation is tested on the said touchstone, what we clearly find from the discussions already made above, is that the impugned Regulation travels beyond the purview of the Act, 2006.

61. The Regulation making power as per Section 92 of the Act, 2006 conferred upon the Food Authority states that it will have the authority to make Regulations on certain matters which are enumerated therein,



however, such power is without prejudice to the generality of the Regulation making power.

62. As discussed in *Naresh Chandra Agrawal (supra)*, the principle “generality versus enumeration” lays down that where a statute confers particular power without prejudice to the generality of the general power, the particular powers are only illustrative of the general power. It has further been held that such power does not, in any way, restrict the general power and, therefore, in a case where the subordinate Legislation, which is challenged, does not fall within the enumerated heads, that itself will not determine if such subordinate Legislation is *ultra vires* the Enabling Legislation. What further needs to be gone into is that if the impugned subordinate Legislation can be upheld by reference to the scope of the general power.

63. The scope of general power for making Regulations conferred on the Food Authority under Section 92 (1) is power to make Regulations consistent with the Act, 2006 and the Rules made thereunder, to carry out the provisions of the said Act. As already discussed above, the provisions of the Act, 2006 are only in relation to regulating food for human consumption, which in our opinion, as per the scheme of the Act and its object, would not include cattle feed or animal feed. Thus the generality of the power of making Regulations vested in the Food Authority under Section 92 (1) cannot be stretched to include power to make Regulations outside the purview of the Act, 2006. The subject relating to cattle or animal feed, as discussed above, lies outside the purview of the Act, 2006 and, therefore, no aid can be taken by the respondents to defend the impugned Regulation by



referring to generality of the Regulation making power available to the Food Authority under Section 92 (1) of the Act, 2006.

64. For the aforesaid reasons, we have no hesitation to conclude that the impugned Regulations are beyond the purview of the Act, 2006 and, therefore, the same are ultra vires the Act itself.

65. As regards the impugned directions dated 10.12.2019, 27.01.2020 and 01.01.2021, we may observe that the said directions have purportedly been issued by the Food Authority under Section 16 (5) of the Act, 2006, which in our opinion, permits the Food Authority to issue such directions to the Commissioner of Food Safety only in relation to matters relating to 'food, safety and standards'. The expression 'food, safety and standards' here also has to be understood, in our opinion, in terms of the definition of expression 'food' and 'food safety' occurring in Section 3 (1)(j) and 3 (1)(q) of the Act, 2006.

66. In both the said clauses, the expression 'for human consumption' occurs and, accordingly, any reference to 'food' will have to be considered as food for human consumption and 'food safety' will have to be considered as safety of food for human consumption. Therefore, in our opinion, sub-Section 5 of Section 16 of the Act, 2006 cannot be permitted to put to service for issuing any directions in relation to cattle feed or animal feed thus the directions dated 10.02.2019, 27.01.2020 and 01.01.2021, which are under challenge herein, are not tenable being beyond the scope of the power of the Food Authority under Section 16 (5) of the Act, 2006.

67. We may refer to the first such directive dated 10.12.2019, wherein as



well it finds mentioned that the Food Authority itself was examining the permissibility of framing feed Regulation supported with appropriate amendments to the Act. Paragraph 2 of the direction dated 10.12.2019 unambiguously captures the said fact. It appears that the Food Authority itself was not clear if any such feed Regulation can be issued without appropriate amendments to the Act, 2006.

68. For the aforesaid reasons, our opinion is that the impugned Regulation as also the directions dated 10.12.2019, 27.01.2020 and 01.01.2021 are illegal and thus not tenable being ultra vires to the Act, 2006.

69. It is not that independent of the Act, 2006 and the impugned Regulations, BIS standards cannot be made mandatory for commercial feeds, however, for that purpose appropriate recourse would have to be taken by the respondents to the relevant provisions of the Bureau of Indian Standards Act, 2016 and the Rules framed thereunder. The BIS standards are primarily voluntary, which, however, can be made mandatory only if the Central Government takes appropriate steps for issuing any such direction as per the requirement of the BIS Act, 2016 and the Rules framed thereunder.

70. For the discussions made and reasons given above, the writ petition deserves to be allowed.

71. Resultantly, the writ petition is allowed and the Note (c) appended to Regulation 2.5.2 of the Food Safety and Standards (Food Products Standards and Food Additives), Regulation 2011, is hereby quashed. The directives dated 10.12.2019, 27.01.2020 and 01.01.2021 issued by the Food Authority are also quashed.



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72. The writ petition along with pending application stands disposed of.
73. No orders as to costs.

**(DEVENDRA KUMAR UPADHYAYA)**  
**CHIEF JUSTICE**

**(TEJAS KARIA)**  
**JUDGE**

**APRIL 07 , 2026**  
*S.Rawat*