

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2746 OF 2013****1] Vital Nutraceuticals Private Limited**

A Company incorporated under the Companies Act,1956 and a member of India Drug Manufacturers' Association a representative body of the Drugs Manufacturers (Pharmaceuticals) being an institution formed by the manufactures across the country registered under the Societies Registration Act,1860 and having the registered office at 102-B, 'A Wing', Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai-400 018 through its Director, Mr.Ganesh Vithal Kamath.

2] Indian Drug Manufacturers' Association

A representative body of the Drugs Manufacturers (Pharmaceuticals) being an institution formed by the manufacturers across the country registered under the Societies Registration Act,1860 and having its registered office at 102-B, 'A Wing', Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai-400 018.

..Petitioners

VERSUS.

1] Union of India

through Secretary Ministry of Health and Family Welfare, Government of India (Department of Food), Nirman Bhavan, New Delhi - 110 011.

**2] Food Safety and Standard Authority
of India.**

FDA Bhavan, Near Bal Bhavan,

Kotala Road, New Delhi - 110 002. ...Respondents.

Mr. I.M. Chagla, Senior Counsel with Mr. Riyaz Chagla with
Mr. Rajeev Talashikar for the Petitioners.

Mr. G.S. Hariharan with Mr. S.D. Bhosle i/b H.P. Chaturvedi for
Respondent No.1. - Union of India.

Mr. Ramesh Ramamurthy i/b Legal Axis for Respondent No.2

**CORAM: V. M. KANADE &
G.S. KULKARNI, JJ.**

**DATE: 1ST AUGUST, 2014
(In Chamber at 3.00 P.M.)**

P.C.:-

1. By an order dated 28/01/2014, we had requested the Hon'ble Chief Justice to refer the points of reference which were framed by us either before the larger Bench or before the third Judge of this Court. Following points of reference were framed by us:-

(1) Whether the impugned Advisories which

have been issued by Respondent No.2 have the force of law and are within the ambit and scope of the power conferred on Respondent No.2 - Food Authority under the provisions of the said Act and Rules and Regulations framed thereunder ?

(2) Whether Respondent No.2 - Food Authority had the power and authority to issue these Advisories under section 16(1) read with section 16(5) read with sections 18 and 22 of the said Act without following the procedure laid down under Sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament ?

2. So far as point of reference No.(1) above is concerned, one of us viz. V.M. Kanade, J. had taken a view that these Advisories, particularly the Advisory dated 11/05/2013 pertaining to product approval does not have force of law. Similarly, so far as point of reference No. (2) above is concerned, it was held by one of us viz. V.M. Kanade, J. that Respondent No.2 - Food Authority did not have power and authority to issue these Advisories under sections 16(1) read

with section 16(5) read with sections 18 and 22 of the Act without following the procedure laid down under sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament. Brother G.S. Kulkarni, J., however, did not agree with the view which was taken by one of us viz. V.M. Kanade, J. The matter was thereafter referred to the third learned Judge viz. Ranjit More, J. who was pleased to pronounce his view on 30/06/2014. Our brother the third learned Judge Mr. Justice Ranjit More has concurred with the view taken by one of us viz. V.M. Kanade, J. and has observed in para 32 of his Judgment as under:-

“32. In the light of the above discussion, I hold that the impugned advisory i.e. the product approval advisory dated 11th May, 2013 issued by respondent No.2 has no force of law and is not within the ambit and scope of the power conferred on respondent No.2 - Food Authority under the provisions of the FSS Act, the Rules and Regulations framed thereunder. Further it is held that respondent No.2 - Food Authority had no power and authority to issue the impugned advisory on Product Approval under Section 16(1), read with section 16(5), read with sections 18 and 22 of the FSS Act, without following the procedure laid down

under Sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament.”

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

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

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

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

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

(G.S. KULKARNI, J.)

(V.M. KANADE, J.)