



CONSTITUTIONAL LAW

FOOD

Rajasthan High Court Orders FSSAI to Frame Regulations on Genetically Modified Foods, Citing Right to Safe Food under Article 21

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Introduction

In a decision with far-reaching implications for India's food safety regime, the Rajasthan High Court in *Kritesh Oswal & Ors. v. Union of India & Ors.*^[1] directed the Central Government and the Food Safety and Standards Authority of India (FSSAI) to urgently frame and notify regulations governing genetically modified (GM) foods under Section 22 of the Food Safety and Standards Act, 2006.

The Division Bench held that the absence of such regulations has created a regulatory vacuum posing risks to public health and violating the fundamental right to life and health under Article 21. The Court observed that despite India's commitments under international biosafety conventions, GM food continues to enter the market without proper safety standards or oversight.

Reaffirming the State's duty under Article 47 to ensure safe nutrition, the Court's ruling highlights that food security cannot come at the cost of food safety, and that scientific progress must align with constitutional values and the precautionary principle.

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Background of the Case

The present Public Interest Litigation (PIL) was filed by Kritesh Oswal and others raising serious concerns about the unregulated sale, manufacture, import, and distribution of genetically modified (GM) food products in India. The petitioners contended that despite the enactment of the Food Safety and Standards Act, 2006 (FSS Act), which mandates a regulatory framework for GM foods under Section 22, the Central Government and the Food Safety and Standards Authority of India (FSSAI) had failed to notify any regulations governing such products.

It was argued that in the absence of these regulations, the import and sale of GM food particularly edible oils such as soybean and canola were being permitted without scientific evaluation of their impact on human health. This, the petitioners claimed, violated the Right to Life and Health under Article 21 of the Constitution. They also challenged Rule 6(7) of the Legal Metrology (Packaged Commodities) Rules, 2011, which allows labelling of GM products, arguing that labelling cannot legitimize an otherwise prohibited sale.

The petition highlighted findings from the Centre for Science and Environment (CSE) indicating the presence of GM ingredients in Indian food products and relied on parliamentary replies acknowledging that no standards for GM foods had been framed by FSSAI. The petitioners also pointed out that the Genetic Engineering Appraisal Committee (GEAC) constituted under the Environment (Protection) Act, 1986 had continued to grant approvals for import of GM foods even after being divested of such authority through a 2007 exemption notification.

In response, the Union of India and FSSAI admitted that while draft GM Food Regulations, 2022 had been published, they were yet to be finalized and notified. The respondents maintained that GEAC approvals were earlier granted under temporary abeyance notifications but have since lapsed.

Against this backdrop, the Court was called upon to determine whether GM food could be allowed in India without a notified regulatory framework, and whether the government's inaction infringed upon citizens' constitutional right to safe and wholesome food.

Issues Before the Court

The Rajasthan High Court identified three principal questions for determination:

1. **Regulatory Framework:** Whether there is an urgent need for the Central Government and FSSAI to frame and notify regulations under Section 22 of the Food Safety and Standards Act, 2006 governing genetically modified (GM) foods.
2. **Legality of GM Food Approvals:** Whether the manufacture, import, sale, or distribution of GM food products can be permitted in the absence of such regulations.
3. **Validity of Labelling Rule:** Whether Rule 6(7) of the Legal Metrology (Packaged Commodities) Rules, 2011, which allows labelling of GM products, is consistent with the FSS Act or is ultra vires its provisions.

Court's Observations and Findings

The Bench undertook an extensive analysis of:

- The **1989 Rules** under the Environment (Protection) Act.
- The **Food Safety and Standards Act, 2006**.
- Relevant international conventions and domestic parliamentary reports.

Key Findings

1. **Regulatory Vacuum:** The Court observed that even after Section 22(2) of the Food Safety and Standards Act, 2006 came into force in November 2021, no regulations governing the safety of genetically modified (GM) foods have been finalized. This persistent inaction has resulted in a **legal and administrative vacuum**, leaving GM food governance in a state of uncertainty.
2. **Constitutional Mandate:** Reaffirming that the **Right to Safe and Nutritious Food** is intrinsic to the **Right to Life under Article 21**, the Court cited *Centre for Public Interest Litigation v. Union of India*^[2] and *Swami Achyutanand Tirth v. Union of India*^[3]. It further invoked **Article 47**, which casts a duty upon the State to raise the level of nutrition and improve public health.
3. **Breach of International Obligations:** As a signatory to the **Cartagena Protocol on Biosafety**, India is internationally obligated to establish robust mechanisms for regulating genetically modified organisms (GMOs) to safeguard biodiversity and public health.
4. **Legislative Intent and the Precautionary Principle:** The Court emphasized that the very purpose of the Food Safety and Standards Act, 2006 was to establish science-based standards for food safety, including GM foods. The continued failure to operationalize these standards defeats the legislative intent and undermines the precautionary principle, which mandates regulatory caution in matters affecting human health and the environment.

Court's Directions

In conclusion, the Court issued the following directions:

1. **Framing of Regulations:** The Central Government and the Food Safety and Standards Authority of India (FSSAI) were directed to finalize and notify comprehensive regulations under Section 22 of the Food Safety and Standards Act, 2006, governing genetically modified or engineered foods, within a specified timeframe.
2. **Interim Prohibition:** Until such regulations are formally notified, no genetically modified or engineered food products shall be manufactured, imported, sold, or distributed in India.
3. **Coordination and Oversight:** The Court emphasized the need for effective coordination between the FSSAI and the Genetic Engineering Appraisal Committee (GEAC) to ensure that GM food approvals, testing, and monitoring align with statutory and biosafety obligations.
4. **Validity of Labeling Rule:** The Court upheld the validity of Rule 6(7) of the Legal Metrology (Packaged Commodities) Rules, 2011, clarifying that the labelling requirement does not legitimize the sale of GM food in the absence of FSSAI regulations.

In conclusion, the Court reaffirmed that food safety is not merely a regulatory concern but a constitutional imperative, directly linked to the right to life, health, and human dignity. By invoking both domestic constitutional duties and international commitments, the judgment sets a clear precedent for ensuring that scientific advancement in the food sector proceeds within the boundaries of law, ethics, and public welfare.

Author's View

The Kritchesh Oswal judgment stands as a compelling reminder that food safety is a constitutional right, not a policy choice. By placing the onus squarely on the Central Government and the FSSAI, the Rajasthan High Court has reinforced the idea that the

State's duty to protect public health under Article 47 must be actively realized through timely and effective regulation.

This ruling also bridges the gap between constitutional jurisprudence and contemporary science, invoking the precautionary principle to ensure that innovation in biotechnology does not compromise public welfare. The Court's insistence on a structured regulatory framework under Section 22 of the FSS Act not only aligns India's domestic law with its international obligations under the Cartagena Protocol, but also sets a judicial precedent for proactive governance in areas where policy inertia threatens citizens' rights.

Moving forward, it is essential that the FSSAI and the Ministry of Health expedite the notification of GM food regulations, establish robust testing infrastructure, and enhance transparency in approval processes. The judgment is more than a legal directive it is a call to reaffirm that the right to safe and wholesome food is intrinsic to human dignity, and that regulatory silence can no longer endanger that right.

For more details, write to us at: contact@indialaw.in

[1] D.B. Civil Writ (PIL) No. 9095/2019

[2] 16 SCC 279

[3] 2016 (9) SCC 699

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