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FOOD

Suspension Is Not a Standing Penalty: Bombay High Court Clarifies Section 32(3)

Food safety suspensions occupy an uneasy space in regulatory law. They are meant to be swift and precautionary, a tool to pull an unsafe kitchen off the street before anyone gets sick, not a punitive measure that lingers on regardless of what happens next. The Bombay High Court's decision in Hotel Alankar v. State of […]

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PUBLISHED 30 September 2026

Food safety suspensions occupy an uneasy space in regulatory law. They are meant to be swift and precautionary, a tool to pull an unsafe kitchen off the street before anyone gets sick, not a punitive measure that lingers on regardless of what happens next.

The Bombay High Court's decision in **Hotel Alankar v. State of Maharashtra** revisits this distinction, and does so on facts that make the point unusually vivid: a licensee whose compliance score climbed from 69% to 97% within three weeks, yet whose licence remained suspended for over two months thereafter, through two rounds of adjudication.

The judgment, delivered by a Division Bench of Justices Sharmila U. Deshmukh and Neeraj P. Dhote, is a useful reminder to regulators and licensees alike that Section 32(3) of the Food Safety and Standards Act, 2006 is a public-health circuit-breaker, not a standing penalty, and that once the circuit is repaired, the power to keep it open runs out.

Table of contents

- Background: The Inspection, Suspension, and Re-Verification
- The Question Before the Court
- The Court's Reasoning
  - 1. The Department Cannot Disown Its Own Score
  - 2. The Re-Verification Report Was Ignored Entirely
  - 3. The Unsafe Cooking Oil Was a Historical Fact, Not a Continuing One
  - 4. An Oral Admission Cannot Override a Documented Inspection
  - 5. Ancillary Breaches Belong in the Penalty Provisions, Not Suspension Extensions
- Holding
- Why This Matters
- Conclusion

Background: The Inspection, Suspension, and Re-Verification

The petitioner operates Hotel Alankar in Karad, Satara, under an FSSAI licence valid until 2027. A **surprise inspection on 7 July 2026** returned a score of 75 out of 110 (69%) and flagged a familiar cluster of kitchen violations:

- Unlicensed sale of liquor, cold drinks, and packaged water
- A shared frying station and storage for vegetarian and non-vegetarian food
- Discharge of used cooking oil into the drain
- Unhygienic housekeeping

A cooking-oil sample later came back as "unsafe."

Acting the very next day, the Assistant Commissioner (Food) invoked the proviso to Section 32(3) and **suspended the licence with immediate effect**, treating the deficiencies as a threat to public health.

The petitioner's statutory appeal under Section 32(4) was still pending when the Commissioner of Food Safety ordered a re-verification. Conducted on 31 July 2026, it recorded 106 out of 110 marks (97%), leaving only three parameters in partial compliance, all administrative in nature:

- An updated licence display
- Internal testing records
- Potable-water testing records

Despite this, the **Appellate Authority dismissed the appeal on 19 August 2026**, upholding the suspension. It leaned heavily on an oral admission recorded during the hearing that the proprietor was unfamiliar with the Schedule IV hygiene standards and on the finding that the establishment had continued operating during the suspension period. It treated both as sufficient to sustain the order regardless of the re-verification score.

The Question Before the Court

The Bench framed the issue narrowly: once the deficiencies that justified an emergency suspension have been **substantially cured**, as reflected in an official re-verification, can the suspension nonetheless continue indefinitely?

The Court's Reasoning

The judgment builds its answer on five connected observations.

1. The Department Cannot Disown Its Own Score

The department's own grading matrix classifies 90% and above as **"Compliance Exemplar."** Having certified the establishment at that level, the appellate authority could not simultaneously treat it as unfit to operate.

The Court called the outcome "surprising," a rare note of open scepticism in an appellate judgment, and a signal of how far removed the impugned order was from the record before it.

2. The Re-Verification Report Was Ignored Entirely

More structurally significant, the appellate order simply did not engage with the re-verification report at all. The re-verification had been ordered by the Commissioner for the specific purpose of testing whether the original grounds for suspension still held.

> *Continued suspension, if any, can be ordered only on consideration of the re-verification report and on finding of continued non-compliance.*

This is arguably the **operative holding** of the case. A re-verification that is conducted but not reasoned over is worse than no re-verification at all, because it creates the appearance of due process without its substance.

3. The Unsafe Cooking Oil Was a Historical Fact, Not a Continuing One

On the unsafe cooking-oil finding, the most serious of the original grounds, the Court drew a careful distinction between a **historical fact and a continuing one**. The oil sample was unsafe when the establishment was still operating under the old practices.

What mattered for a licence still under suspension was whether that specific failure persisted after correction, and that could only be tested by letting the establishment resume operations under supervision. Without an opportunity to demonstrate ongoing compliance, the finding could not be used to freeze the licence forever, particularly where no cancellation proceeding had even been initiated.

4. An Oral Admission Cannot Override a Documented Inspection

The Court took direct issue with the appellate authority's reliance on the proprietor's viva voce admission of unfamiliarity with Schedule IV standards to override the documentary re-verification score. The test under the licence conditions is whether the **establishment complies**, not whether its proprietor can recite the regulation from memory.

Substituting an oral impression for a documented inspection outcome was, in the Bench's words, "a course unknown to law." This point has wider resonance: it cautions appellate and regulatory authorities against using an applicant's demeanour or answers in a hearing as a proxy for the compliance record actually placed before them.

5. Ancillary Breaches Belong in the Penalty Provisions, Not Suspension Extensions

The Court addressed the two "aggravating" findings the State leaned on: sale of unendorsed products and continued operation during suspension. It located them correctly within the statute. **Sections 55 and 63** of the Food Safety Act already prescribe monetary penalties for exactly these violations.

The Bench noted, pointedly, that the State's own reply affidavit invoked these very provisions, yet the State chose suspension over the penalty route Parliament had provided for such conduct.

There was also an underlying irony worth extracting for practitioners: the petitioner could not apply online to update its licence to cover the missing product categories precisely because the suspension had locked the portal. The suspension order was itself generating the compliance gap that was later cited to justify keeping it in place.

On the technical-personnel violation, the Court followed the Nagpur Bench's earlier ruling in *Wardha Tehsil Go-Dugdha Utpadak Sahakari Sangh Ltd v. State of Maharashtra*, which had held that similar staffing deficiencies do not, without more, amount to the "exceptional circumstances" that Section 32(3) is designed to address.

Holding

The Court quashed the appellate order of 19 August 2026 and revoked the suspension of 8 July 2026, **restoring the licence**. It issued the following specific directions:

- The department may proceed under Sections 55 and 63 for the period of unauthorised operation.
- The department may continue monitoring the establishment for future compliance.
- The petitioner was directed to file an undertaking within seven days that it would not sell any food product not endorsed on its licence.

Why This Matters

The case is a compact illustration of a distinction that Indian food-safety litigation returns to often but does not always articulate cleanly: the difference between a **protective power and a punitive one**.

Section 32(3)'s forthwith-suspension proviso exists because some risks cannot wait for a show-cause process, but by the same logic, it has no independent life once the risk it was designed to address is extinguished. Sections 55 and 63, by contrast, exist precisely to punish past non-compliance and unauthorised operation, and do so through fines rather than an open-ended shutdown.

For **regulators**, the practical lesson is procedural discipline: a re-verification ordered mid-appeal cannot be commissioned and then ignored. If the appellate authority intends to discount a favourable re-verification score, it must say why, on the record, not fall back on an oral impression from the hearing room.

For **licensees and counsel**, the case is a useful precedent for arguing that compliance, once documented by the department's own inspection machinery, shifts the burden onto the regulator to justify continued suspension with fresh, specific findings. Ancillary breaches (unendorsed products, operating during suspension) belong in the penalty provisions the statute actually provides for them, not as a backdoor extension of the suspension itself.

Conclusion

Hotel Alankar does not disturb the settled proposition that food safety authorities may act swiftly and firmly where public health is genuinely at stake. What it insists upon is that the power be exercised, and reviewed, in step with the facts as they evolve, not frozen at the moment of the original inspection while a formal appellate process runs its course.

An **"exemplar" compliance score**, awarded by the department's own inspectors, is not an inconvenient data point to be explained away; it is the very fact the statute asks the authority to act on.

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