

The Validity of Provisions for Food in Municipality Act & Public Health Acts in Kerala-A Review Essay

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Abstract: There are two public health acts in Kerala, viz The Travancore-Cochin Public Health Act and Madras Public Health Act. These acts explicitly contain provisions for food control which authorize the Health Inspectors to enter, inspect, seize and punish the food business operator for various offences. The Kerala Municipality Act authorizes secretary or any other officer authorized by him to inspect eateries, seize and destroy items which are unfit for human consumption. But the enactment of FSS Act changes the scenario. This essay critically analyses the validity of provisions in municipality and public health acts to curb food safety related issues in the context of food safety and standards act.

Keywords: Public Health, FSS Act, IPC, Constitution of India, Municipality, Food Control, Food Safety

I. INTRODUCTION

The state of Kerala not having a uniform public health act. Even though a draft law is formulated it is not officiated yet. The public health issues in the state are governed mainly by three laws-The Kerala Municipality Act, Madras Public Health Act and The Travancore-Cochin Public Health Act. These laws authorize the secretary of municipalities or any authorized person, in most times Health Inspectors to enter, inspect, seize, destroy and punish the food business operators for wrong doing. But the enactment of FSS Act has a remarkable influence on the existing state laws in relation to food.

The provisions of the above mentioned acts regarding food are discussed.

II. DISCUSSION OF RELEVANT ACTS

The provisions related to food in the Kerala Municipality Act, Madras Public Health Act, Travancore-Cochin Public Health Act are discussed below. A brief description of Food Safety and Standards Act is also given.

1. THE KERALA MUNICIPALITY ACT, 1994

The section 30 of Chapter III and sections 447, 456 and 476 – 482 of Chapter XX deals with food related matters.

Section 30. Powers, functions and responsibilities of Municipality.— *The administration of a Municipal area in respect of the matters enumerated in the First Schedule shall, subject to the provisions of this Act and such other provisions as may be prescribed in this behalf and the provisions of other Acts and the rules made thereunder vest in the Municipality and it shall have the power and responsibility to prepare and implement schemes for economic development and social justice in relation to the matters enumerated in the First Schedule*

Provided that, it shall be the duty of the Municipality to render necessary service to the inhabitants of the Municipal area in respect of the matters enumerated as mandatory functions in the First Schedule.

Accordingly, the first schedule contains three mandatory functions under item numbers 11, 12 and 13 regarding food.

FIRST SCHEDULE [See Section 30(A)] FUNCTIONS OF THE MUNICIPALITY

A. Mandatory Functions

11. Regulation of slaughtering of animals and sale of meat, fish and other easily perishable food stuffs etc.
12. Control of eating houses.
13. Prevention of food adulteration

CHAPTER XX

LICENCES AND FEES INDUSTRIES, FACTORIES AND OTHER TRADES

447. Purpose for which places may not be used without license.—

(1) A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified 24 [in the rules made in this behalf) or for any other trade without license and except in accordance with the conditions specified therein and where the license is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the license shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public: Provided that no notification under this sub-section shall take effect before the expiry of sixty days from the date of its publication.

(2) The owner or occupier of every such place shall within thirty days of the publication of the notification apply to the Secretary for a license for the use of such place for such purpose. 25[(3) The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant such license.

(3 A) The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and condition as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such license.)

[(4) The periods of license granted under sub-section (3) and (3A) or a license deemed to have been granted under sub section (6) shall, unless a date is specified therein, expire on completion of three years from the date of its issue.

(5) Every application for any license or permission or for its renewal under this Act or the rules or bye-laws made thereunder, shall be made not less than thirty days and not more than ninety days before the earliest day on which such license or permission is required or the license expires.]

MILK TRADE

456. Regulation of milk trade.—

(1) No person shall without or otherwise than in conformity with a licence from the Secretary-

(a) carry on within a municipal area the trade or business of a dealer in or importer or seller or hawker of milk or dairy produce; (b) use any place in a municipal area for the sale of milk or dairy produce; Provided that no such licence shall be granted to any person who is suffering from a dangerous disease.

(2) The licence under sub-section f 1) may be granted on such conditions as the Secretary may deem necessary which may extend to the construction, ventilation, conservancy, supervision and inspection of the premises, within the municipal area where the animals from which the milk supply is derived are kept or for reasons to be recorded in writing be refused .

INSPECTION OF PLACES WHERE SALE, ETC., IS CARRIED ON

476. Duty of Secretary to inspect.— The Secretary shall make provision for the constant and vigilant inspection of animals, carcasses, meat, poultry, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter, oil and any other articles exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or preparation for sale.

477. Power of Secretary for purposes of inspection.— (1) The Secretary or any person authorised by him in writing for the purpose may, without notice, enter any slaughter house or any place where animals, poultry or fish intended for food are exposed for sale or where articles of food are being manufactured or exposed for sale at any time by day or night when the slaughter, exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.

(2) Where the Secretary or any person authorized by him has reason to believe that in any place any animal intended for human food is being slaughtered or any carcasses, is being skinned or cut up, or that any food is being manufactured, stored, prepared, packed, cleansed, kept or exposed for sale or sold without or otherwise than in conformity with a licence, he may enter any such place without, notice, at any time, by day or night for the purpose of satisfying himself whether any provision of laws, byelaws or regulations or any condition of a license is being contravened.

(3) No claim shall lie against the Secretary or any person acting under his authority or the Municipality for any damage or inconvenience caused by the exercise of powers under this section or by the use of any force necessary for effecting an entry into any place under this section.

(4) In any legal proceeding in respect of the powers exercised under this section in which it is alleged that any animal, poultry, fish or articles of food were not kept, exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale, or were not intended for human food, the burden of proof shall lie on the party so alleging.

478. Preventing inspection by Secretary,— No person shall, in any manner whatsoever, prevent the Secretary or any person authorised by him from exercising the powers under section 477.

479. Power of Secretary to seize diseased animal, noxious food, etc.— Where any animal, poultry or fish intended for food appears to the Secretary or to the person authorised by him, to be diseased, or any food appears to him to be noxious, or if any vessel or utensil used in manufacturing, preparing or containing such articles appears to be of such kind or in such state as to render the article noxious, he may seize or carry away or secure such animal, article of food, utensil or vessel, in order that same may be dealt with as hereinafter provided, Explanation.— Meat subject to the process of blowing shall be deemed to be noxious,

480. Removing or interfering with articles seized.— No person shall remove or in any way interfere with an animal or article secured under section 479.

481. Power to destroy articles.— (1) Where any animal or article of food is seized under section 479, it may, with the consent of the owner or person in whose possession it was found, be forthwith destroyed in such manner as to prevent it being used for human food or exposed for sale, and where the article is perishable, without such consent.

(2) Any expenses incurred in destroying any animal or article under sub-section (1) shall be paid by the owner thereof or person in whose possession it was at the time of its seizure.

482. Production of article seized before Magistrate and power of Magistrate to deal with them.— (1) Articles of food, animals, poultry, fish, utensils or vessels seized from a Municipal area under section 479 and not destroyed under section 481 shall, as soon as possible, be produced before a Magistrate of the First Class having jurisdiction in that area.

(2) Where the Magistrate, whether on a complaint or otherwise, on taking such evidence as he considers necessary, is of opinion that any such animal, poultry or fish is diseased or any such article is noxious or any such utensil or vessel is of such kind or in such state as is described in section 479, he may order the same - (a) to be forfeited to the Municipality; (b) to be destroyed at the expense of the owner thereof or persons in whose possession it was at the time of seizure, in such manner as to, prevent the same being again exposed or hawked about for sale, or used for human food or for the manufacture or preparation of or for containing any such article as aforesaid.

501. Prohibition of infected person carrying on occupation.— Where any person knows or has been certified by the health officer, the local medical officer, or a qualified medical practitioner that he is suffering from a dangerous disease, he shall not engage in any occupation or carry on any trade or business unless he can do so without risk of spreading the disease

2. MADRAS PUBLIC HEALTH ACT, 1939

An Act to make provision for advancing the Public Health of the State of Madras. It extends to the whole of the Malabar District and the Kasaragod taluk of South Kanara district as defined in clause (b) of S-5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)]. The act contains 135 sections distributed in 15 chapters, a miscellaneous part which includes sections 136 to 145 and schedule 1 for penalties. The chapter XII sections 108 to 115 exclusively deals with food and section 122 of Chapter XIII explains the power of health inspector to enter and seize unwholesome food.

CHAPTER XII FOOD CONTROL

108. Prohibition of sale of unsound food

(1) No person shall -

(a) sell, expose or hawk about for sale, or keep, store or prepare for sale, any animal intended for human consumption which is diseased, or the flesh of any animal which has died on account of natural causes; or

(b) sell, expose or hawk about for sale, or keep, store, manufacture or prepare for sale, any food or drug intended for human consumption which is unfit for such purpose or is unwholesome.

(2) In any prosecution under sub-section (1), the Court shall unless and until the contrary is proved, presume -

(a) that any animal found in the possession of a person who is in the habit of keeping animals of that class for sale for human consumption, has been kept by such person for sale, and

(b) that any food or drug found in the possession of a person who is in the habit of keeping, storing, manufacturing or preparing such food or drug for sale for human consumption, has been kept, stored, manufactured or prepared by such person for sale.

109. Punishment for contravening provisions of S, 108 through others –

(1) Any person who does any of the acts mentioned in sub-section (1) of S. 108 or in clauses (a) to (d) of sub-section (1) of S. 5 of the Madras Prevention of Adulteration Act, 1918* through others employed by him, whether the latter be adults or children, shall be liable to punishment for such act as if he had himself done the same.

(2) If a child under seven years of age does any of the acts aforesaid, the employer of the child or the parent or other person having the care and custody of the child, as the case may be, shall be liable to punishment for such act as if he had himself done the same.

110. Flesh of dead animal not to be consumed

No person shall knowingly consume the flesh of any animal which has died on account of natural causes.

Explanation - It shall be no defence to a prosecution under this section that the flesh was consumed as a matter of custom, or as a matter of right on account of services rendered in removing dead cattle or on any other ground.

111. Importing meat into local areas

(1) No person shall bring into any local area, without the permission in writing of the Health Officer thereof, the flesh of any animal slaughtered outside the local area otherwise than in a slaughter-house maintained or licensed by the Government or by a local authority.

(2) Any flesh brought into the local area in contravention of sub-section (1) may be seized by the Health Officer or any Officer or servant of the local authority authorised by him in that behalf, and sold or otherwise disposed of as the Health Officer may direct; and in case of sale, the sale-proceeds shall be credited to the funds of the local authority.

* Repealed by the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).

- (3) Nothing in this section shall be deemed to apply to -
- (a) cured or preserved meat, or
 - (b) flesh or meat carried through any local area for consumption outside the limits thereof and not stored anywhere within such limits in the course of transit, or
 - (c) flesh or meat brought into the local area by any person for immediate domestic consumption and not for sale: Provided that the local authority may, by public notice, direct that the provisions of this section shall apply to cured or preserved meat of any specified description or brought from any specified place.

112. Power of Health Officer to enter premises used for food trade

The Health Officer may, without notice enter any place at any time, by day or by night, where any article of food is being manufactured, prepared, exposed or stored for sale, and inspect such article and any utensil or vessel used for manufacturing, preparing or containing, the same. .

113. Powers of Health Officer to deal with carriers of disease handling food

- (1) The Health Officer may, at any time, examine any person engaged in selling, or in manufacturing or preparing for sale, or in any manner whatsoever handling any article of food intended for sale.
- (2) If on such examination the Health Officer finds that such person is suffering from, or harbouring the germs of, any infectious disease, such person shall not take part in selling any article of food or in manufacturing, preparing or in any manner handling any article of food intended for sale, until the Health Officer certifies in writing that he is free from infection from such disease.

114. Investigation of diseases caused by milk or dairy produce

- (1) If the Health Officer has reason to believe -
 - (a) that any person within the local area over which he has jurisdiction is suffering from an infectious disease attributable to milk or dairy produce supplied within such area, or
 - (b) that the consumption of any milk or dairy produce supplied within such local area is likely to cause any person therein to suffer from an infectious disease the Health Officer may require the person supplying the milk or dairy produce to furnish within such time as may be fixed by the Health Officer, a complete list of all dairies (whether situated within or outside the limits of the local area) from which that person's supply of milk or dairy produce is derived or has been derived during the six weeks immediately preceding.
- (2) If such supply or any part of such supply is obtained not directly from a dairy but through some other person, the Health Officer may make a similar requisition upon such other person.
- (3) Every person on whom any requisition is made under sub-section (1) or subsection(2) shall be bound to comply therewith.

115. Inspection of dairy by Health Officer

- (1) The Health Officer may inspect any dairy referred to in S. 114 and the milch cattle and the employees therein, and if, on such inspection, the Health Officer is of opinion that any infectious disease is caused, or is likely to be caused, by the consumption of the milk or dairy produce supplied from such dairy, he may make an order prohibiting the supply of any milk or dairy produce for human consumption from such dairy,
- (2) An order made under sub-section (1) shall be forthwith cancelled by the Health Officer on his being satisfied that the milk supply has been changed, or (that the employees objected to by him have ceased to work at the dairy, or that the cause of infection has been removed.
- (3) If an order made under sub-section (1) or cancelled under sub-section (2) relates to a dairy situated outside the limits of the local area, the Health Officer shall also inform the local authority within whose jurisdiction the dairy is situated.
- (4) When an order is made under sub-section (1), the Health Officer may either -
 - (a) permit the milk or other produce of the dairy, after being boiled or treated in such other manner as he may direct, to be sold or used as animal food, subject to any reasonable restrictions he may impose, or
 - (b) cause such milk or dairy produce to be destroyed.
- (5) No person shall, sell or supply any milk or dairy produce in contravention of the provisions of this section.

CHAPTER XIII **Fairs and Festivals**

122. Power to enter and seize unwholesome food

- (1) The Health Officer, or a Health or Sanitary Inspector or the local authority or of any of the local authorities concerned, or any officer of the Government or of any such local authority appointed by the Government in this behalf, may -
 - (a) enter and inspect any building or shop in the fair or festival * [centre], which is a source of food-supply;
 - (b) for the purpose of inspection, have access to any source of water-supply on such "[centre] or within such distance therefrom as the Government may, by general or special order determine; and
 - (c) seize any food prepared or offered for sale or stored or in course of transit within the fair or festival * [centre]" which, he has reason to believe, is unwholesome or unfit for human consumption, and destroy the same forthwith if, in his opinion, such food is of a perishable nature or the value thereof does not exceed three rupees.
- (2) (a) Any officer seizing any food under clause (c) of sub-section (1), shall, if it is not destroyed under that clause, report the seizure to such authority or person as may be prescribed in that behalf.
- (b) If the authority or person aforesaid is of opinion that the food is unwholesome or unfit for human consumption, such

- authority or person may, by order in writing, direct the food to be destroyed; and any expenses incurred in this behalf (including the cost, if any, of analysing the food or a sample thereof) shall be recoverable from the person from whom the food was seized, as if it were a tax due from him to the local authority or any of the local authorities concerned.*
- (c) If the local authority or person aforesaid is of opinion that such food is wholesome and fit for human consumption, the food shall be returned to the person from whom it was seized; and the cost, if any, of analysing the food or a sample thereof shall be borne by the local authority or local authorities concerned.*

3. THE TRAVANCORE-COCHIN PUBLIC HEALTH ACT,1955

In order to make provision for advancing the public health for the provinces Travancore and Cochin ,The Travancore Cochin Public Health Act was published in 21.06.1955.It contains XVII chapters having 143 sections ,one Miscellaneous Part which is distributed in sections 144-162 and two Schedules for penalties.

The chapter XII sections 114 to 121 exclusively deals with food and section 126 of Chapter XIII explains the power of health inspector to enter and seize unwholesome food . In Schedule 1, penalty for contravening provisions of the act which includes sections 114,115,116, 117,119 ,120 and 121 are incorporated. Schedule 2 PENALTIES FOR CONTINUING BIRACHIS including sections 115,119 and 121.

The bare act in Chapter XII sections 114 to 121 and Chapter XII section 126 are exactly in the same wordings as the sections 108 to 115 in Chaptr XII and section 122 of Chapter XIII of Madras Public Health Act. In order to avoid repetition the reproduction of the said sections is avoided.

4. THE FOO SAFETY AND STANDARDS ACT,2006

The Food Safety and Standards Act was passed by the parliament on August 23, 2006.The main objectives of the Act are

- 1.Shifting of emphasis from prevention of adulteration to a broader concept of food safety
- 2.Single reference point for all matters relating to food safety and standards, regulations and enforcement.
3. Lay food standards based on science,transparency and consultation..
4. Effectively regulate manufacture,storage,distribution and sale of food to ensure consumer safety and promote global trade.
5. Integrated response to strategic issues like novel/genetically modified food and international trade.
6. Empowerment of consumers' with dissemination of adequate information.
7. Rationalize and strengthen existing enforcement mechanism
8. Provision of graded penalties depending on the gravity of offence and accordingly civil penalties for minor offences/lapses and criminal action for various violations.
9. Spread of food safety concept to grass root level by involving local panchayat's and municipalities.
10. transparent and accountable regulatory framework.

The act has 12 chapters containing 101 clauses and 2 schedules.

- Chapter 1. Preliminary:Definition (sections 1 – 3)
- Chapter 2. Food Safety and Standards Authority of India (sections 4 – 17)
- Chapter 3.General Principles of Food Safety (section 18)
- Chapter 4. General Provisions as to articles of Food:prohibitions etc (section 19 - 24)
- Chapter 5. Provisions Related to Import (section 25)
- Chapter 6. Special Responsibilities as to Food Safety (sections 26 – 28)
- Chapter 7. Enforcement of the Act : Commissioner of Food Safety,Food safety Officer,Licensing etc (sections 29 – 42)
- Chapter 8. Analysis of Food : laboratories,sampling and public analysts (sections 43 – 47)
- Chapter 9. Offences and Penalties (sections 48 – 67)
- Chapter 10. Adjudication and Food Safety Appellate Tribunal (sections 68 – 80)
- Chapter 11.Finance,Accounts,Audits and Reports (sections 81 – 84)
- Chapter 12. Miscellaneous (sections 85 – 101)

The 1st Schedule outlines the five zones from which the States and Union Territories will get representation in Food Authority. The 2nd Schedule gives a list of eight Food Acts/Orders which will stand repealed on commencement of the provisions of the Act.

The central government established FSSAI 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,healthy and wholesome food for human consumption In 2008, Food Safety and Standards Authority of India was mandated by the Act.

Section 92 (1) provides the regulator,FSSAI, with the previous sanction of the Central government and after previous publication,by notification,make regualtions consistent with this Act and Rules made there under.FSS Rules and Regulations have been notified in the official gazette of India on 1st August , 2011 and came into force on 5th August , 2011.The notified major regulations are

1. The Food Safety and standards (Licensing and Registration of Food Business) Regulations,2011
2. The Food Safety and standards (Food products Standards and Food Additives) Regulations,2011

3. The Food Safety and standards (Packaging and Labelling) Regulations,2011
4. The Food Safety and standards (Contaminants,toxins and Residues) Regulations,2011
5. The Food Safety and standards (Laboratory and Sample Analysis) Regulations,2011
6. The Food Safety and standards (Prohibition and Restrictions on Sale) Regulations,2011

The new regulations include

1. The Food Safety and standards (Health Supplements,Nutraceuticals,Food for Special Dietary use,Food for special Medical Purpose,Functional Food and Novel Food) Regulations,2016
- 2.The Food Safety and standards (Food Recall Procedure) Regulations,2017
3. The Food Safety and standards (Import) Regulations,2017
4. The Food Safety and standards (Organic Foods) Regulations,2017
5. The Food Safety and standards (Approval for Non-Specified Food and Food Ingredients) Regulations,2017
6. The Food Safety and standards (Alcoholic Beverages) Regulations,2018
7. The Food Safety and standards (Fortification of Foods) Regulations,2018.

III. CRITICAL REVIEW – DISCUSSION

I invite kind attention to some news in Kerala in connection with food safety

Heath officials seize rotten chicken,stale ice cream from ‘Dhe Puttu’

Kozhikode:Health officials from Kozhikode corporation seized stale food materials from various hotels during an inspection in the city on Tuesday.Officials seized used oil preserved for reuse,stale ice cream and rotten chicken meat from ‘Dhe Puttu’ hotel at Puthiyara.All seized food materials were destroyed by the officials.Health Inspector Dr R.S Gopakumar said that stringent action under the Kerala Municipal Act will be taken against eateries which serve food that cause health issues to the public.(The Mathrubhumi daily 21 May 2019)

Kochi:Stale food seized from eateries

Kochi:The health officials of Tripunithura municipality conducted raids in three leading hotels in the town on Tuesday.The stale food seized from these restaurants-dishes of meat,fish and egg-were displayed at the reception of the municipal office along with the name tag of eateries.....The raids by municipal health officials on Tuesday was carried out to ensure food safety in eateries(Times of India daily 13 Feb 2019).

These news have created confusion in general public. Now, some questions arise

- (i) whether municipalities or their secretaries have any power to enter,inspect,seize and destroy food items
- (ii) whether the Health Inspectors can conduct any raid related to food safety.
- (iii) whether the authority related to food safety is vested with state food safety commissioner only.

Municipality Act v FSS Act

On closely analyzing Kerala Municipality act and FSS Act,it is seen that the power of secretary mentioned in sections 477 to 482 of Municipality act and the power of FSO mentioned in sections 38,41 and 42 of FSS Act are on same matter,in same way.

Some analogy are

1.Analogy with Section **477. Power of Secretary for purposes of inspection**

FSS Act Section 38(2) The FSO may enter and inspect any place where the article of food is manufactured,or stored for sale,or stored for the manufacture of any other article of food.or exposed or exhibited for sale and where any adulterant is manufactured or kept,and take samples of such articles of food or adulterant for analysis.

FSS Act Section 38(5) The FSO shall,in exercising the powers of entry upon,and inspection of any place under this section, follow,as far as may be,the provisions of the CrPC,1973 relating to the search or inspection of a place by a police officer executing a search warrant issued under the code.

2. Analogy with Section **478. Preventing inspection by Secretary**

FSS Act Section 62 :Punishment for obstructing or impersonating a Food Safety Officer.-If a person without

reasonable excuse, resists, obstructs, or attempts to obstruct, impersonate, threatens, intimidate or assault a FSO in exercising his functions under this Act, he shall be punishable with imprisonment for a term which may extend to three months and also with fine which may extend to one lakh rupees.

3. Analogy with Section 479. Power of Secretary to seize diseased animal, noxious food, etc

FSS Act Section 41. Power to search, seizure, investigate, prosecute and procedure thereof.-(1) Notwithstanding anything contained in sub-section (2) of section 31, the FSO may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the DO of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witness for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the CrPC, 1973 (2 of 1974) relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the FSO under this Act.

4. Analogy with Section 480. Removing or interfering with articles seized.

FSS Act Section 60. Punishment for interfering with seized items-If a person without the permission of the FSO, retains, removes or tampers with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized under this Act, shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to two lakh rupees.

5 . Analogy with Section 481. Power to destroy articles

FSS Act Section 38(4) - Where any article of food seized under clause (b) of sub-section 1 of section 38, is of perishable nature and the FSO is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the FSO may, after giving notice in writing to the FSO, cause the same to be destroyed.

38.1(c) keep it in the safe custody of the FBO such article of food after taking a sample;.....

PROVIDED THAT where the FSO keeps such article in the safe custody of the FBO, he may require the FBO to execute a bond for a sum of money equal to the value of such article with one or more sureties as the FSO deems fit and the FBO shall execute the bond accordingly.

6. Analogy with section 447: License

The regulator, Food Safety and Standards Authority of India make Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011 with effect from 05.08.2011. This regulation explains the registration procedures for petty business operators and central-state licensing procedures for business operators. This regulation empowers the district officer, Designated Officer to issue, suspend, cancel licenses.

On close examination, it is very clear that all provisions related to food in the Municipality Act are described in detail in the FSS Act. The FSS Act is a central act whereas Municipality Act is a state law. We have to examine other two article/provision to have a clear picture.

.Article 254 of Indian Constitution

254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Section 89 of FSS Act

89.Overriding effect of this Act over all other food related laws.-The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect,by virtue of any law other than this Act.

Section 97.2 of FSS Act

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 the section 6 of General Clauses Act 1897(10 of 1897),shall apply as if such provisions of the state law has been repealed.

In light article 254 of Indian constitution and section 89 and 97.2 of FSS Act,the provisions of Municipal act regarding food is void and no longer valid.All actions taken with respect to the said provisons is illegal.

Public Health Laws v FSS Act

Section 97.2 of FSS Act read

“ 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 the section 6 of General Clauses Act 1897(10 of 1897),shall apply as if such provisions of the state law has been repealed. ”

In the light of this provision read with article 254 of Indian Constitution and section 89 of FSS Act,the following acts/orders which prevailed in Kerala get repealed.

- (1) The Kerala Edible Oils,Vegetable Oils,Vanaspati and Baby Food Dealers license Order 1975
- (2) The Kerala Pulses Dealers License Order 1972
- (3) all sections of chapter XII, section 122 of chapter XIII of Madras Public Health Act get repealed
- (4) all sections of chapter XII, section 126 of chapter XIII and penalties for sections 114,115,116,117,119,120 and 121 detailed in Schedule 1 and Schedule 2 of Travancore-Cochin Public Health Act.

The Health Inspectors appointed under Travancore-Cochin Public health Act and Madras Public Health Act , have no authority for food inspection in hotels or any other eateries from 05.08.2011.The authority is fully vested with the Commissioner of Food Safety and officers under him,appointed under FSS Act.However section 63of Travancore Public Health Act give Health/Sanitary Inspectors the power to inspect any place in which any notified disease mentioned in section 60 is reported or suspected to exist.In the back door of this power,the Health Inspectors inspect all eateries across the state,seizing food items and exposing them to the media;an action completely illegal.Such power is vested only with Food Safety Office,says section 38.4 of FSS Act.They are not the authorized person to collect water sample meant for running food business,the authority vested with sample collector of the laboratory.The authority to provide safe drinking water is vesated with the local governments.

IV. CONCLUSION

In light of the FSS Act,the provisions in Municipality Act,Madras Public Health Act and Travancore Cochin Public Health Act regarding food get repealed and remain void.The municipal secretary and health inspectors have no role in maintaining food safety at their own sauthority.The power is vested with state commissioner of food safety.The State food safety enforcement and analytical mechanisms should be strengthened for monitoring food related matters.

REFERENCES

1. The Indian Constitution
2. Food Safety and Standards Act,2006
3. Food Safety and Standards Regulations,2011
4. Indian Penal Code
- 45 Prevention of Food Adulteration Act,1954

6. The Kerala Municipality Act,1994
7. Madras Public Health Act,1939
8. Travancore-Cochin Public Health Act,1955

