

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION

IN

W. P. (C) No. 8568 of 2010

IN THE MATTER OF:

UDAY FOUNDATION FOR CONGENITAL

DEFECTS AND RARE BLOOD GROUPS

PETITIONER

VERSUS

UNION OF INDIA AND ORS.

RESPONDENTS

SUBMISSIONS ON DRAFT GUIDELINES

SCOPE OF THE PETITION

1. The Present PIL was filed in December 2010 by the Petitioner, Uday Foundation for Congenital Defects and Rare Blood Groups, seeking the following directions/orders to be issued to the Respondents to the following effect:
 - (1) To immediately ban junk food and carbonated drinks in all unaided and private schools and schools under Central and State Government and local municipality in Delhi.
 - (2) To initiate measures to discourage the availability of "fast food", unhygienic food and foods with unhealthy ingredients within 500 yards of the schools in Delhi.
 - (3) To further direct the respondents to develop a comprehensive school canteen policy which emphasizes healthy nutrition among school going children.
 - (4) Ban junk food & carbonated drinks advertisements in media as well as in the television through any means.
2. It is noteworthy that Prayers (1) and (2) related to banning junk food and carbonated drinks in Delhi Schools and discouraging the availability of "Fast Foods" with unhealthy ingredients within 500 yards of Delhi Schools respectively. Prayer (3) is the broader prayer for formulation of a comprehensive "School Canteen Policy". Prayer (4) was qua ban on marketing and promotion of junk food.

{Prayers at Pg. 17-18}

COURT PROCEEDINGS LEADING TO THE DRAFT GUIDELINES

3. The Union of India had filed its Counter Affidavit dated 16.07.2011 *inter alia* expressing that it was aware and conscious of the issue of sale of Junk Food in the school premises and the delirious effect of the same on the health of children. Further, the said affidavit contained indicative measures being undertaken by the Union of India to spread awareness on the issue. It was stated that the FSSAI was also undertaking a project for development of guidelines for making available quality and safe food in schools and that the guidelines for improvement of safety and quality food in school canteens will be issued after the completion of the project and approval of the guidelines by the concerned Scientific Panel, Committee and the Authority.

{@ Pg. 210 - 213}

4. This Hon'ble Court vide order dated 05.10.11 took notice of the Counter Affidavit filed by the Union of India and recorded its "in principle acceptance that there is need to ban junk food in Schools." The Court further called for a fresh Affidavit and action report stating the concrete and effective steps the Union would take.

5. Pursuant to the order dated 05.10.2011, the Union of India filed its Additional Counter Affidavit dated 10.01.2012 which was more elaborate than the previous affidavit. Vide order dated 11.01.2012 the Court took notice of the Additional Counter Affidavit filed by the Union of India and issued directions to FSSAI which was the expert body to conclude the process **within 6 months.**

{Additional Counter Affidavit @ Pg. 265-270}

6. In the hearing dated 29.08.2012 FSSAI informed the Court that it had invited proposals from independent agencies for development of the guidelines and that AC Nielsen was appointed as the Agency. Further, the scope of proposed work was also put before the Court and was recorded in the order. The

7. The **1st Draft Guidelines** as framed by AC Nielsen were placed before the Court on 24.07.2013. However, the same were found to be inadequate and grossly lacking vide order dated 04.09.2013. The Court after considering the provisions of the FSSAI Act, 2006 and taking note of the bodies formed thereunder, entrusted the Central Advisory Committee (CAC) with the task of framing fresh guidelines:

"The cue therefore would be that pertaining to the dietary habit of school children in the context of excessive consumption of 'junk food', the Central Advisory Committee, while preparing the draft guidelines, should consult not only the representatives of the industry but even experts in public health and especially health of a child; the adolescent and the youth. That would mean people having expertise on 'junk food' and its ill effects if consumed as a dietary habit be also associated while preparing the draft guidelines."

In view of the same, this Hon'ble Court directed that Fresh Draft guidelines be placed before it on 04th December 2013.

8. Vide a subsequent order dated 29.10.2013, the Court addressed the applications filed by the Intervener Respondents seeking deletion of the term “junk food” contending that the same was not a scientific term and was not a category of “food” as defined under FSSAI Act, 2006 and challenging the competence of the CAC to formulate guidelines on “Junk Food”. This Hon’ble Court discussed the ambit and scope of the Petition as well as the order dated 04.09.2013 and held that the order dated 04.09.2013 did not require any modification and highlighted as under:

“The concern in the writ petition is not with hazardous food or with a standard of food safety envisaged by the Act. The concern is with a dietary habit and promotion of what is popularly known as junk food amongst school children and thus it would be wrong on the part of the applicants to state that the Committee constituted under Section 11 i.e. the Central Advisory Committee cannot be directed to render an opinion. Any committee could have been directed by us to render an opinion.”

It was further directed that the Guidelines be placed before Court on 18.12.2013.

9. The present Draft Guidelines were placed before Court on 12.03.2014. These Draft Guidelines were formulated by an Expert Committee and approved by the CAC, after inclusion of representatives of all the Intervener Respondents.
10. These submissions are further divided into two sections dealing with:

A. An overview of the Draft Guidelines for making available wholesome, nutritious, safe and hygienic food to School Children in India

B. Suggestions for Improvement

A. OVERVIEW OF THE DRAFT GUIDELINES

Draft Guidelines for making available wholesome, nutritious, safe and hygienic food to School Children in India

General Appreciation:

It is stated at the outset that the present set of guidelines are far better and more meaningful than the first set of guidelines that were rejected by this Court in September 2013. The Guidelines reflect a much better understanding of the core area of concern, being Children's Health and the problem at hand, being injurious effects of consumption of unhealthy foods High in fats, sugars and salts (HFSS). At the same time, the Guidelines seem to be a sincere endeavor to cover the scope as envisaged in the Petition as well as the Orders of this Hon'ble Court in as much as they touch and address each of the prayers sought for in the Petition.

Broadly the Guideline is split into the following three sections and their corresponding sub sections:

1. **Background – Perspective and Objective**
2. **Part I - Guidelines for making available Wholesome and Nutritious Food to School Children**
3. **Part II - Guidelines on Food Safety, Hygiene and Sanitation for Food available in School Canteens**

1. Background – Perspective and Objective

@ Pg. 2 of Guidelines

The background paragraph is aimed at providing a perspective on the huge number of schools in India and the wide variety thereof. It further indicates the varying degree of availability of wholesome, nutritious, safe and hygienic foods. It also highlights that lack of balanced diet and inadequate physical activity causes various health related concerns. ***“The objective of this document is to make available Wholesome, Nutritious, Hygienic and Safe Food to School Children in India.”***

NOTE: Suggestion I pertains to this part.

2. PART I

Guidelines for making available Wholesome and Nutritious Food to School Children

@ Pg. 2 - 16

This part provides information pertaining to:

- a healthy lifestyle and the role of Diet and Physical Activity in maintaining good health;
- the composition of a Balanced diet and its reflection on the Food Pyramid;
- **Definition, ingredients, sources and injurious effects of HFSS foods including risk of various Non-Communicable Diseases such as Cardiovascular diseases, Diabetes, Cancer, Childhood**

Obesity, Hypertension etc. with statistics pertaining to each of these.

- Indicative figures showing increasing HFSS foods consumption in India
- Underlying principles that must be borne in mind when addressing the issue of Child Health and the injurious effects of HFSS foods, and the benefits of improved dietary habits

This part then goes on to lay down the Guidelines in terms of Prayers in the Petition. The Guidelines are framed under **Section 3.2 of this Part (@ Pg. 9 - 15). The guidelines while touching upon all aspects of the matter, are lacking in material particulars and the same is highlighted in the suggestions segment of this note.**

NOTE: Suggestions II-VIII pertain to Part – I of Guidelines.

INDEX OF PART – I

- a. **Section 1 – Context of the Proposal**
 - 1.1 Healthy Lifestyle
 - 1.2 WHO Global Strategy on Diet, Physical Activity and Health

- b. **Section 2 – Balance Diet, HFSS Food and Non-Communicable Diseases (NCDs)**
 - 2.1 Balanced Diet and Dietary Needs of Children
 - 2.2 HFSS Foods and ingredients of concern
 - 2.3 HFSS Foods and burden of NCDs
 - 2.4 HFSS Food Consumption in India

- c. **Section 3 – Guidelines for Promoting Wholesome and Nutritious Food and Restricting/Limiting the Availability of Foods High in Fat, Sugar and Salt (HFSS Foods) among School Children**
 - 3.1 The Underlying Principles

 - 3.2 **GUIDELINES**
 1. **Restrict/Limit the Availability of most common HFSS Foods in Schools and area within 50 meters**

{Prayer 1 & 2}
 2. **Develop a Canteen Policy to provide Nutritious, Wholesome and Healthy Food in Schools**

{Prayer 3}
 3. **Regulate Promotion of ‘HFSS Food’ among School Children**

{Prayer 4}
 4. FSSAI should consider reviewing the labelling regulations to enable disclosure of all Relevant Information.

3. PART II

Guidelines on Food Safety, Hygiene and Sanitation for Food available in School Canteens

@ Pg. 18 – 33

This part further elaborates on the best practice, preventions, mechanisms, methods and precautions to be exercised during the preparation, cooking, serving and storage of food meant for consumption by School Children. This part is in the nature of a step by step guide on various aspects and stages of preparation and consumption of food by School Canteens and in Schools.

This part is an extension to the comprehensive School Canteen Policy which has been envisaged in 3.2 (2.) of Part – I and is in terms of Prayer 3 of the Petition.

NOTE: Suggestion VII-VIII pertain to Part – II of Guidelines.

INDEX OF PART – II

a. Section 1 – Food Safety, Hygiene and Sanitation

- i.** Building Design of School Canteens
- ii.** Hygienic Requirement: Utensils/ Equipment
- iii.** Hygienic Requirement: Preparation Steps
- iv.** Safe Handling of Cooked Food
- v.** Personal Cleanliness
- vi.** Health Status
- vii.** Personal Behaviour
- viii.** Pest Management
- ix.** Waste Management
- x.** Training

b. Checklists

- i.** Utensils and Other Equipment
- ii.** Raw Materials Management
- iii.** Water and Salads
- iv.** Handling of Cooked Food
- v.** Monitoring and Controls

B. SUGGESTIONS FOR IMPROVEMENT

(In sequential order of suggested incorporation into the guidelines)

I. Addition of a Statement of Objects and Addition of a list of Target Audience/ Participants/ Stake Holders

[@ Start of the Guidelines]

- It is submitted that while the Guidelines present a detailed spectrum of information and recommendations, in the process the intent, purpose and objective of the guidelines is not clearly borne out in a manner that can aid in the efficacy of the guidelines and their understanding.
- With this in mind, it is suggested that the Guidelines must contain a Statement of Objects/ Purpose highlighting the key areas sought to be addressed and essential features promulgated. It must also reflect the intended participants for successful implementation of these Guidelines.
- As an example:
 - i. Key Concern sought to be addressed by the present guidelines is the ill effects of consuming Junk Food as a dietary habit by children and the promotion of Junk Food targeted at Children as target audience.*
 - ii. The Present Guidelines are meant to direct/advise Schools across India to ensure inculcation of healthy eating habits and food choices in children through School Nutrition Policy including inter alia restriction/ ban on sale and marketing of junk foods/ HFSS foods in School, implementation of a comprehensive School Canteen Policy, enforcement of monitoring and auditing mechanism for quality of food served at Canteens and through Mid-day meal schemes.*
 - iii. Adherence to the Guidelines must be ensured through active participation of all stakeholders including but not limited to Government, Food Safety Officers, Superintendents, School Trustees, Administrators, Principals, Teachers, Parents, Students, Canteen Operators, Mid-day Meal Scheme Managers etc.*
 - iv. These guidelines are intended to cover all foods and beverages served or sold within the school, at any school sponsored activity or within 50m (or such larger distance as may be prescribed) of the School Premises.*

- II. Inclusion of “servings” based description regarding the daily required intake of various food groups and ingredients categorized by age, gender, physical activity levels, preferences (veg. and non-veg.)

AND

Inclusion of a detailed table showing the various food groups along with foods belong to the same

AND

Sample Menus for an entire day

(@ Para 2.1 at Pg. 3 r/w Figure 1 @ Pg. 4)

OR

(as detailed annexures to the Guideline)

Currently, the guidelines, under Clause 2.1 provide the entire intake requirements in terms of % figures of ingredients such as carbohydrates, proteins etc. While this might be scientifically accurate, for a lay person it will be impossible to calculate as to what it is that he/she must actually eat on a daily basis in order to ensure that they take a balanced diet.

The purpose of the guidelines should be to make this information easily understandable and practically implementable by Schools, parents and children who are the target beneficiaries. An approach that concentrates more on providing practically understandable criteria and standards such as by prescribing the various food groups and their respective quantities to be consumed each day based on the age, gender, physical activity level and preferences of the child would be a major enhancement to the efficacy of the guidelines.

The Food Pyramid in Figure 1 is a good addition, especially with the boxed relativity indications on the sides ranging from adequately to sparingly. However, what is being suggested by way of the “servings” based methodology of tabular depiction is a more understandable quantification of the abstract details.

Sample Descriptions (Based on Materials from USA)

1. *“Choose my Plate – Daily Food Plans” - from www.choosemyplate.gov*

{@ Pg. 1-4, Compilation}

This is an interesting website which has been developed by the United States Department of Agriculture. The Daily Food Plans Section of this website allows you to enter your details such as Age, Sex, Weight, Height and Physical Activity Level. Upon clicking submit you get to know your category in terms of the daily calories intake needed.

{@ Pg. 2, Compilation}

Based on the category of calories intake pattern that one falls in, any person can find out what the daily quantities of different food groups suggested for such a person are.

{@ Pg. 3, Compilation}

Further, to make it more interesting and involved, there is a concept of daily food plan worksheet which could be a major way of getting children involved into eating healthy balanced diets.

{@ Pg. 4, Compilation}

2. **“Vegetarian Diets for Children: Right from the Start” – from Physicians Committee for Responsible Medicine, Wisconsin, Washington**

{@ Pg. 5-9, Compilation}

This document indicates another simpler method in which the details with regards to the quantities of different food groups to be eaten can be incorporated along with a daily meal plan categorized as per age. Further, it also provides Sample Menus categorized as per age which should be a major addition to the existing guidelines.

{@ pg. 7-8, Compilation}

3. **“Balance Diet Chart for Children” – from www.md-health.com**

{@ Pg. 10-15, Compilation}

This document also contains three tables:

- Table 1: Nutrition needs for Children {@ Pg. 10}
- Table 2: Food Examples for Children {@ Pg. 11}
- Table 3: Meal Plan for Children {@ Pg. 13}
- Table 4: Amount of Fluids {@ Pg. 14}

4. **“How much to feed kids 4-8” – from Fit Sanford Web MD**

{@ Pg. 16-17, Compilation}

This document once again indicates another mechanism of tabular construction of the relevant information along with pictorial representations categorized as per food groups for children aged 4 – 8 years.

IMPORTANT NOTE:

Such methods and materials could also be considered for incorporation in the Nutrition based curriculum and circulated to parents by the School as part of the Policy.

III. **“Junk Food” as a term could find mention in the Guidelines along with a layman definition/ dictionary meaning**

@ Clause 2.2 @ Pg. 4

While the Guidelines refer to and describe Foods High in Fat, Sugar and Salt, also known as HFSS foods, the term which is most commonly associated with all such foods across the world curiously does not find any mention in the guidelines. The efficacy of the guidelines is related in great part to the ease of understanding, especially considering it has to be implemented at the level of schools.

In this background, it is suggested that such a description of junk food as may be found appropriate without the risk of being unscientific may

be incorporated, possibly under Clause 2.2 @ Pg. 4 along with description of HFSS foods.

NOTE: It may be noted that all through the life of the petition, such varieties of foods have been referred to as Junk Food. In fact, even the Union in its affidavit described as to what is commonly understood as Junk Foods.

Sample Descriptions:

a. Centre for Science and Environment

Any food that is high in fat, sodium, oil and/or sugar content is junk food. Having little nutritional value, junk foods are empty calories. They lack micro-nutrients like vitamins, minerals, amino acids and fibers. Most junk food fall into the categories of either 'snack food' or 'fast food'.

b. From Union of India's Counter Affidavit dated 05.10.2011

- *Any food that has poor nutritional value is considered unhealthy and may be called Junk food.*
- *Junk Food is understood as food that is high in fat, sodium and/or sugar.*
- *Junk foods are empty calories. An empty calorie lack in micronutrients such as vitamins, mineral, amino acids and fibre and is high in energy.*
- *Junk food is high in fats and sugar and is responsible for obesity, diabetes, hypertension, cardiovascular diseases, dental cavities etc.*

c. Merriam Webster Dictionary

- *Junk Food*
'Food that is high in calories but low in nutritional content'
'something that is appealing or enjoyable but of little or no value'

IV. The language of the provision in the Guideline with regards to restricting/ limiting of the availability of HFSS foods will require reconsideration.

AND

The mechanism for Practical Implementation of the same must also be provided in that section

**@ 3.2(1) at Pg. 9 -10
r/w Table 2 @ Pg. 10
r/w Colour Coding @ Pg. 11
and Table 3 @ Pg. 12**

- The prayer clauses (1) and (2) in the Petition respectively sought **a complete ban** on sale of junk foods in **School** and **discouraging the availability of fast foods in a distance of 500 yards from the School** respectively.
- It is strongly suggested that HFSS foods, some of which have been identified in the Guidelines itself in Table 2 (@ Pg. 10), and many others

that can be easily identified, should be completely banned within the school premises.

- A mechanism of Colour coding categories has been suggested @ Pg. 11 of the Guidelines wherein Red indicated HFSS foods which must be rarely eaten and Green indicates foods that must be eaten most. Yellow indicates foods that can be eaten sparingly.

NOTE: Colour Coding scheme could be modified and instead of Red and Green which are for Non-Veg and Veg categorization, some other colours may be used to avoid confusion.

- It must be ensured that foods belonging to the “Red” category such as those in Table 2 are completely banned within the School premises. Precedent for such ban exists in Canada, Costa Rica, Latvia, Lithuania, UK, Philippines etc.
- Canteen Contracts must contain clauses prohibiting the sale of HFSS foods/ Junk Foods/ packaged foods of the HFSS variety and sweetened carbonated and non-carbonated drinks in the school premises.
- Also, 80% of the food available in the Canteen must be of the “Green” category and only 20% of the “yellow” Category.
- Further, as regards the limitation/ restriction for a distance of 50m outside school, the distance must be reconsidered and a slightly larger distance must be envisaged, approx. 100m.
- Also, the guidelines appear to be silent on the implementation mechanism for such a restriction. The guidelines must clearly lay down how the said restriction will be implemented.
- **Example:** By prohibiting sale to children in school uniforms at places in 50m distance from school.
- Also, the requirement for children not to venture out in school hours must be re-iterated and strictly enforced to avoid undue exposure to unhealthy food outside school premises.

V. Table 4 @ Pg. 12 and Table 5 @ Pg. 13 should include more alternatives and the same must be depicted in a two columnar fashion depicting the unhealthy HFSS alternative on one side and the healthier alternative on the other.

Example:

UNHEALTHY	HEALTHY ALTERNATIVES
Burgers	Whole wheat burgers with vegetables
Pizzas	Whole wheat thin crust pizzas with vegetable toppings
Sandwiches	Whole wheat sandwiches with lean

	meat and/or vegetables
Samosa	Baked Samosa
Carbonated Drinks	Nimbu Pani, Fresh Juices etc.

- It is important to understand that mere prohibition or non-availability of the unhealthy fast food/ junk food/ HFSS food options will not by itself enable inculcation of healthy eating habits in children.
- In order for that to happen we must also realize that such foods have become part and parcel of modern life. Therefore, the emphasis must be on endeavours to redesign the fast foods to contribute to the nutritional well- being of children while maintaining satisfaction of taste.

VI. Restriction/ Limitation/ Ban on promotion and marketing of HFSS foods to Children

@ 3.1(ii) at Pg. 9
r/w 3.3 bullet points @ Pg. 13

- In this regard reference may be made to *WHO's "Set of recommendations on the Marketing of Foods and Non-Alcoholic Beverage to Children"*. Recommendations 4 and 5 on Pg. 9 of that document are relevant and worth incorporation into the guidelines.
- The Guidelines must clearly define the age group for which restrictions will apply, the communication channels, settings and marketing techniques to be covered, what constitutes marketing to children according to factors such as products, timing, etc. placement and content of marketing message, as well as what foods are to be covered by marketing restrictions (suggestion : Red and Yellow Category)
- Guideline must also provide that settings where Children gather should be free from all forms of marketing of junk foods, HFSS foods, fast foods etc. Such settings include but are not limited to schools, school canteens, school grounds, billboards in 500m vicinity of school premises, nurseries, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.
- Precedent for no advertisements/restrictions on advertising targeted at Children: UK, Canada, France, Poland, Romania, Sweden, New Zealand, South Korea etc.

VII. Concern has been raised by the Members of CAC from the States of Uttar Pradesh and Goa regarding the guidelines being urban centric, especially in view of the fact that there is no mention of the mid-day meal scheme.

It is extremely pertinent to suggest that both Part – I and Part – II of the Guidelines must squarely and strictly apply to the food procured, prepared, served under the Mid-day meal scheme since that affects a huge section of the school going children, especially in the slightly rural setups.

The guidelines must provide for an effective monitoring mechanism for the food provided under the Mid-day meal scheme right from procurement of raw materials upto waste disposal.

Changes in this regard must be effected @ Clause 3.2(2) at Pg. 10-11 and in Part-II of the Guidelines.

VIII. Implementation of various aspects must be provided for within the guidelines itself so as to ensure that the entire Guidelines is not merely another scrap of paper and that it has practical utility and benefits to the public at large.

- Body/ Person responsible (nodal person)
- Hierarchy for each of the below mentioned works/ monitoring/ enforcement in terms of the guidelines
- Mechanisms, Timelines/ Deadlines by which the said pending works must be completed
- Deterrents for non-compliance, incentives for adherence.

Things for which no implementation mechanisms, bodies, deadlines provided under the guidelines:

- a. @ Pg. 10, Nationwide programme for identification of HFSS foods
- b. @ Pg. 10 – 11, School Canteen Policy
- c. @ Pg. 11, Well Structured curriculum with involvement of NIN
- d. @ Pg. 13, timeline to develop framework to regulate promotion
- e. @ Pg. 22 – Hierarchy, onus, deterrents : Should provide for a complete code in terms of the auditing, analysis, assessment etc.

IMPORTANT:

The CAC members from *Kerala* have put up some suggestions @ Pg. 3 of Annexure IV in this regard as to the hierarchy for implementation of the School Canteen Policy.

Points 1 – 7 of the same are extremely pertinent and worth incorporation.