

Paramount Relation of Fssai with Consumer Safety: Elucidated Through Maggi Ban

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ABSTRACT: *The paper discusses the indispensable value of Food Safety and Standards Authority of India (FSSAI) in the food industry through the elucidation of the recent ban imposed by FSSAI on the India's favourite comfort food called Maggi, which is manufactured by Nestle India. This is a theoretical paper, designed and written after evaluating the secondary resources.*

FSSAI is the regulator of the food industry, thus all the food companies need to adhere to the regulations, provisions and standards specified by it in the Food Safety and Standards Act. By ensuring adherence to these regulations and provisions, FSSAI plays an essential role in safeguarding consumers' health and protecting them against fraudulent and unethical practices of food producer. Thus for FSSAI, priority is safety and security of the consumers which cannot be compromised in any situation, be it the most-liked comfort food like Maggi. The paper explains about the working of FSSAI, its major regulations and provision, the recent Maggi ban, and the significance of FSSAI in consumer safety.

KEYWORDS- *Consumer Safety , FSS Act , FSSAI, Maggi Ban, Nestle India*

I. INTRODUCTION

1.1 THE CASE OF MAGGI

Nestle India is a subsidiary of the company Nestle SA of Switzerland, which is registered under the provisions of Companies Act 1956. The subsidiary is carrying out the business in India since 30 years. Nestle India's food product called "Maggi" has come under the scrutiny for being unhealthy and a source of health hazard. On June 5th 2015 the food regulatory body of India FSSAI had put a ban on Maggi after it was tested for following violations-

- 1) Lead content in excess of the maximum permissible limit of 2.5ppm
- 2) Misleading information on the label of the product reading – "No added MSG"
- 3) Release of non-standardized food product in the market which is "Maggi Oats Masala Noodles with Tastemaker" without risk assessment and grant of product approval. .

The violations were discovered after the food product was tested by the office of Commissioner of Food Safety, Uttar Pradesh. Following this various other states including Delhi, Kolkata, Tamil-Nadu, Gujarat and many others started testing the product.

Out of the 9 variants which are Maggi xtra delicious chicken noodles, Maggi thrilling curry noodles, Maggi cuppa mania chilly chow masala YO, Maggi cuppa mania masala YO, Maggi 2 minutes masala noodles/ Maggi hungroo noodles, Maggi vegetable multigrain noodles, Maggi vegetable atta noodles, Maggi xtra delicious magical masala noodles, Maggi 2 minute masala dumdaar noodles, only 3 were tested. [1]

1.1.1 The Market Response

After Maggi was banned by FSSAI and a product recall was ordered, the other food companies have become wide-awake, as they monitor and scrutinize every step before taking final decision. The companies are making sure that they follow all the rules and regulations to make the food product healthy and safe for consumers, so that they do not attract FSSAI's attention.

This all resulted because maggi ban was followed by rejection of "product approval applications" of Tata Starbucks, Mc Cain, Kellogg, Heinz etc. All the rejections and bans have resulted in market becoming more conscious of their product's safety. [2]

Along with this, the Maggi ban has affected the sales of entire instant noodles category. India's instant noodles market ranks 5th in the world with a market size of Rs 3,500 crore (approx), which is now on a decline. [3] Big retailers, such as Wal-mart, Big Bazaar, Reliance, etc took the Maggi food product off their shelves.

1.1.2. The Company Response

In a hearing conducted by the FSSAI which was attended by the Global CEO of Nestle , MD, CEO Nestle India and other officials, the following arguments were provided by Nestle in their defence -

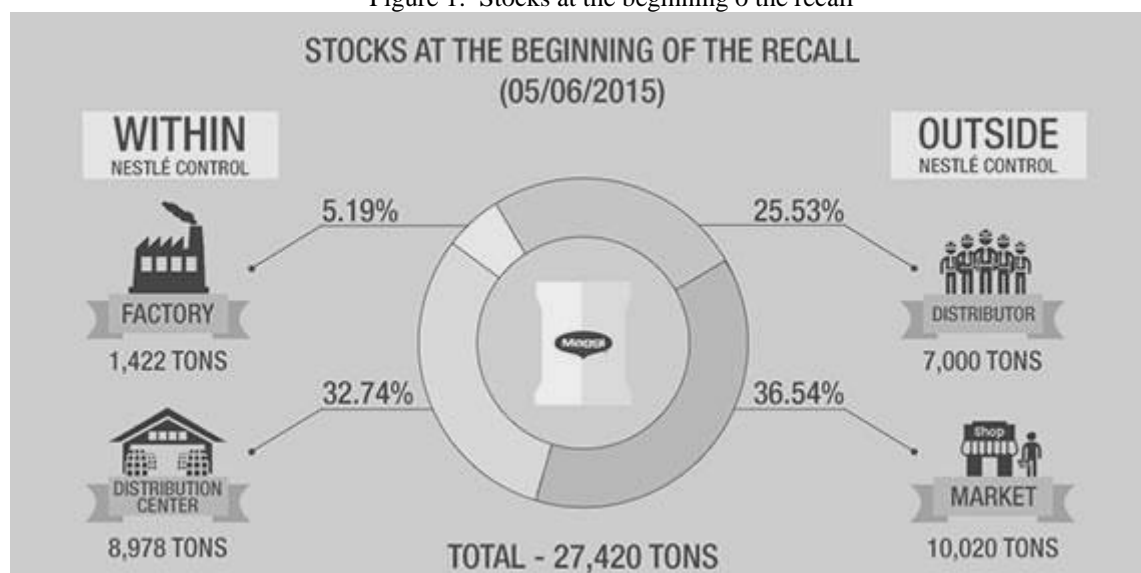
- 1) They argued that the testing protocols were not correct:
 - (a) Maggi as a food product comprises of 2 things- noodles and tastemaker, thus needs to be tested together i.e. the form in which it is consumed and not separately as done by the authority.
 - (b) The CFL Kolkata has tested the components together, but still it showed high level of lead because the sample remained open for considerable period before being tested.
- 2) The “no added MSG” label on the product was on account of lack of clarity in the regulation and also that the company followed the practice which is being followed in the industry. Further they added that if it is the case of mislabelling they will rectify it.
- 3) And with regard to the release of “Maggi Oats Masala Noodles with tastemaker” without getting it assessed for risk/safety and without obtaining product approval, the representatives of the company argued that it was at a time when Advisory dated 11.05.2013 was under stay granted by court. [4]

According to the company they were not given any opportunity to give their explanation, a general discussion was held and they were just informed about excess lead found in samples.

On 5th June 2015 Company decided to recall the maggi packets from the market throughout India, this process of withdrawal took place in 3 parts which were, blocking the distribution at their own warehouses and distribution centres, blocking of orders by distributors and the last one being the most complicated was getting the stock back distributors, customers and consumers. This recalled stock was destructed in cement kilns under high temperature. The numbers of maggi packet destroyed were around 400 million.

The stock of Maggi at the beginning of the recall is shown in the figure 1 below. [5]

Figure 1: Stocks at the beginning of the recall



Source : <https://www.nestle.in/aboutus/ask-nestle/answers/maggi-noodles-india-recall-process>

Further the company justified their product Maggi being safe by referring to the testing done in the foreign countries, which are-

- 1) U.K- UK Food Standard Agency took total of 900 and found lead to be within EU permissible level. [6]
- 2) Singapore- Agri-Food and Veterinary Authority of Singapore declared after testing some samples that Maggi instant noodles produced in India and those available in Singapore are safe to eat. [7]
- 3) Canada- The Canadian Food Inspection Agency (CFIA) did not find any health risk associated with the consumption of the Maggi brand noodles.[8]
- 4) U.S.A – The testing done by U.S. health regulator USFDA found that the lead content is within the acceptable levels for US consumers.[9]
- 5) Vietnam- The Vietnam Food Administration (VFA) announced that the test results of two samples showed that lead was not detected . [10]
- 6) Australia and New-Zealand – The National Measurement Institute of Australia confirmed that Maggi noodles imported from India are completely safe to eat, as the lead levels were under permissible limits set by the regulator. [10]

Since the foreign countries declared maggi as safe, the recalled products (which were not destroyed) were exported to these countries.

The company did not end with the initiation of exports, it filled a case in High Court of Bombay against FSSAI, Chief Executive Officer FSSAI, state of Maharashtra, and against Commissioner of Food Safety (state of Maharashtra). These were the 4 respondents to the case. Nestle India (the petitioner) sought an appropriate writ, order and direction for setting aside the order passes by CEO of FSSAI (the order was to stop the manufacture, distribution and sale of 9 variants of noodles)- and it also challenged the impugned orders which were passed by the Commissioner of Food safety.

These confrontations by Nestle India were made on following grounds-

- 1) Violation of natural justice- According to Nestle India the orders were passes without issuance of any show cause notice to them , also they had not been given particular bases to pass such orders. Thus the orders were passed in haste, violating natural justice.
- 2) Lab accreditation- The labs which tested the samples were not accredited by NBAL or notified under section 43 of Food Safety and Standards Act 2006.
- 3) Testing of sample- Samples were not tested according to its intended use, thus reports cannot be trusted.
- 4) Lead within limits- Nestle India contended that they tested samples in their own accredited lab, and reports showed that lead in within permissible limit.

1.1.3. The Government Response-

As retrieved from the Press Information Bureau of Government of India, “The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution has filed a complaint under section 12(1)(d) of the Consumer Protection Act 1986, in the National Consumer Disputes Redressal Commission(NCDRC). The department has filed this class action suit on behalf of the large number of consumers of Maggi in the country against Nestle India on the grounds of unfair trade practices, sale of defective goods, and selling of Maggi Oats Noodles to public without obtaining product approval. [11]

The claim includes Rs 284.55 crores as damages the company is liable to pay, along with the additional punitive damages of Rs 355.41 crores. Thus the total amount claimed by the Ministry of Consumer Affairs from Nestle India is about 640 crores (approx).

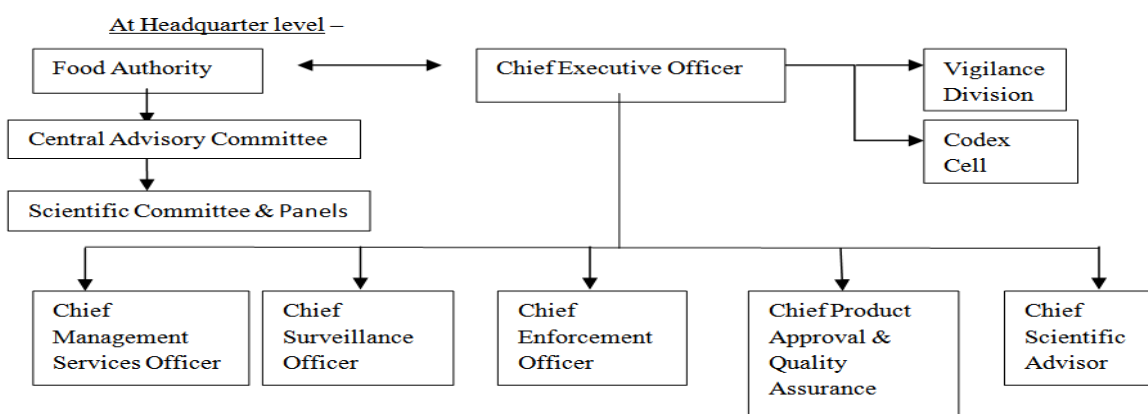
II. FSSAI FRAMEWORK & REGULATIONS

2.1. Structure of FSSAI

The main aim of the Food Safety and Standards Act 2006 was to have a sole reference point for the matters related to food standards and safety, and this was achieved by repealing all the central acts and orders (related to food industry). Thus, in order to move from multi-level and multi-departmental control to a single line of command a statutory authority called as Food Safety and Standards Authority was established, it was established with the objectives of laying down science based standards for food articles, and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. It's headquarter is based in New-Delhi

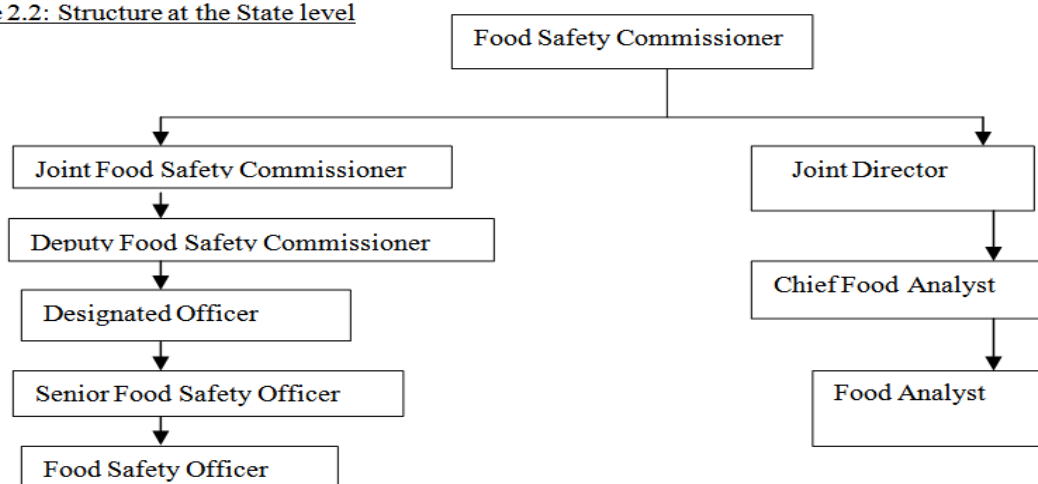
The structure of FSSAI is diagrammatically elucidated in the Figure 2.1 and 2.2 below.

Figure 2.1: Structure at the Headquarter level



Source- http://www.fssai.gov.in/Portals/0/Training_Manual/Volume%20II-%20Food%20Safety%20Regulators%20and%20Food%20Safety%20Management.pdf, Page7

Figure 2.2: Structure at the State level



Source: http://www.fssai.gov.in/Portals/0/Training_Manual/Volume%20II-%20Food%20Safety%20Regulators%20and%20Food%20Safety%20Management.pdf , Page 10

The chairperson is appointed by the Central Government from amongst the persons of eminence in the field of food science or from amongst the person from the administration who have been associated with the subject.

FSSAI performs following functions as mandated by Food Safety and Standards Act 2006 , [12] –

1. FSSAI frames the regulations laying down the standards and guidelines in relation to the articles of food, and also specifies suitable system of enforcing various standards so appraised.
2. The certifying bodies engaged in certification of food safety management system for food businesses are accredited by FSSAI, who also lays down the mechanisms and instructions for the same.
3. Along with certifying bodies FSSAI also lays down the procedure and guidelines for accreditation of laboratories and notification of accredited laboratories.
4. Central government and state governments are provided with technical support and scientific advice in the matter related to framing of policies and rules in the areas having direct or indirect bearing on food safety and nutrition.
5. FSSAI collects and combine the data related to food consumption, prevalence of biological risk, contaminants in food, identification of emerging risks and introduction of rapid alert system.
6. Endeavors to create an information network across the country so that the consumers, public, panchayats , etc receive rapid, reliable and objective information about food safety and issues of concern.
7. Provides training programs for person(s) involved or intends to get involved in the food businesses.
8. It contributes to the development of international technical standards for food, sanitary and phyto-sanitary standards.
9. Lastly it promotes general awareness about food safety and standards.

Functions of the Food Regulators- Every food regulator has distinct and essential functions to perform, which are:-

- 1) Commissioner of Food Safety –
 - Prohibit manufacture, distribution, storage and sale of any food article in the interest of public health within the maximum time of one year.
 - Surveying the industrial units engaged in manufacture of foods for compliance.
 - Organizing and conducting training programmes for the personals.
 - Ensure an efficient and uniform implementation of the standards and also ensure accountability, transparency, objectivity, practicability and creditability.
 - Sanction prosecution of offences punishable with imprisonment.
- 2) Designated Officer – Whole time officer, appointed by the commissioner of food safety and every district has one designated officer performing following functions:
 - Prohibit sale of a food article in contravention with the provision of the act and the rules.
 - Receive report and sample of food articles from food safety officer and get them analysed

- Recommend cases to commissioner for sanction to launch prosecution, in case contravention is punishable with imprisonment.
 - Sanction and launch prosecution in case contravention is punishable with fine.
 - Maintain record of all inspections done by food safety officer and actions taken by them.
- 3) Food Safety Officer- Needs to possess desired qualification and training in food safety, sampling and inspection. The officer is appointed by commissioner and perform following functions :
- Take sample of food (intended for consumption) for analysis purpose.
 - Enter any place of food manufacturing and storage and take sample for analysis.
 - The inspection to follow the provisions of Code of Criminal Procedure, as far as possible.
 - To inspect as frequently as prescribed by the commissioner the food establishments.
 - Maintain database of FBO in the area assigned.
 - Investigate complaints received in respect of contravention to provisions of the act.
- 4) Food Analyst-
- Carry out analysis of the sample as prescribed by the food safety officer, along with the test method
 - Prepares the analysis report.
 - Can also ask for a second sample if feels that the first one is in broken condition.

2.2. Rules and Regulations

FSSAI has framed various rules and regulations which govern the work process of food companies, but some of the major regulations are as follows:-

a) Licensing and Registration Regulation:-

This lays down regulations in respect of licensing and registration, compulsory for any food business. Any person who desires to commence or carry on the food business needs to apply for the license, whereas individuals such as hawkers, petty retailers, itinerant vendor, temporary stallholder etc need not obtain a license but get them registered. [13]

b) Packaging and Labelling:-

This regulation provides for the requirements of packaging and labelling for all types of product from milk products, edible oils, fruits, vegetables, and water. In the context of packaging it provides the type of materials to be used for different type of products depending on how perishable they are. Every food product carries a label, which introduces the product to the customer, thus such labels need to fall on the scale of hundred percent authenticities. The labelling regulation specifies the mandatory information needs to be present on a label, such as name of food, list of ingredients, nutritional information, declarations of veg/non-veg and additives, net quantity, address of manufacturer, code, date of manufacturing and expiry, country of origin and lastly instructions for use. [14]

In the case of Maggi there was a violation of this particular regulation, as the packets of maggi were labelled as “No Added MSG”, but the test showed presence of MSG.

c) Contaminants, Toxins and Residue Regulation:-

Food Safety and Standards Act 2006 defines contaminant as “ any substance whether added or not added to food, but which is present in such food as the result of the production (including operations carried out in crop husbandry, animal husbandry or veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination and does not include insect fragments, rodent hairs and other extraneous matter” [15] . Thus this regulation tabulates the list of crop and metal contaminants, toxic substances and insecticides, the presence of which should not be there in the food products.

2.3. Product Approval Process

FSSAI issues advisories for the products comprising of those ingredients or additives for which there are no standards in the FSS Act, hence are required to undergo the product approval process. But recently FSSAI has faced repercussions in the process of product approval. The Indian Drug Manufacturers Association and Vital Nutraceuticals (a pharmaceuticals company) challenged the process of FSSAI, stating that the body did not have the authority to issue advisory to the products, but only amending regulations framed under FSS Act 2006.

Bombay High Court gave a verdict that “ till the amendments to this act were made and till parliamentary approval had come into place, the particular advisory issued by FSSAI would become null and void since it did not have the power to issue the advisory in the first place” , this verdict was backed by Supreme Court. [16] Thus the FSSAI is now expected to frame new regulations within 6 months and streamline the product approval process.

III. WAS THE ACTION OF FSSAI IN ACCORDANCE WITH THE LAW?

FSSAI directed Nestle India to recall all of its packets of Maggi noodles across the Indian market after the testing of the food article revealed violations.

The Product Recall Process of FSSAI is explained below.

3.1 Product Recall Process

A product recall is the request to return to the manufacturer a batch or an entire production run of a product, usually because of discovery of safety issues. Recalls are costly to the company because they entail replacing of the recalled product or paying for the damage caused.

Purpose of a recall- A recall strives to achieve following goals :-

- (1) Protect consumer health
- (2) Comply with existing rules and regulations
- (3) Minimize the cost of recall
- (4) Regain and improve the company's reputation [17]

The scope of product recall extends to those food products which pose a threat to public, or whose quality does not conform to the standards of the FSS Act and the regulations made therein. Thus there are 2 types of recalls- RECALL 1- for those food articles which can cause health problems, even death.

RECALL 2- for those who are not likely to cause health issues, but do not comply with the act and the regulations made therein. [18]

Thus it can be stated that Yes, the action taken was in accordance to the law, as elucidated by the provisions of product recall process above. In addition to this the Maggi product was not produced in the accordance with the other regulations, as it violated the packaging and labelling regulations, also there was existence of lead in excess amount which can cause health issue. Thus the action by FSSAI was in accordance to the law.

It was when maggi tested positive for excess lead and was assessed for violation of regulations, FSSAI notified Nestle to recall all of its products from the market across the country.

IV. IMPACT OF BAN ON THE COMPANY

4.1. Company's strategy for consumers and staff

In order to not lose their customers' support and loyalty, Nestle kept notifying them through their website's online portal, facebook page, twitter and newspaper clippings about their actions on the maggi ban.

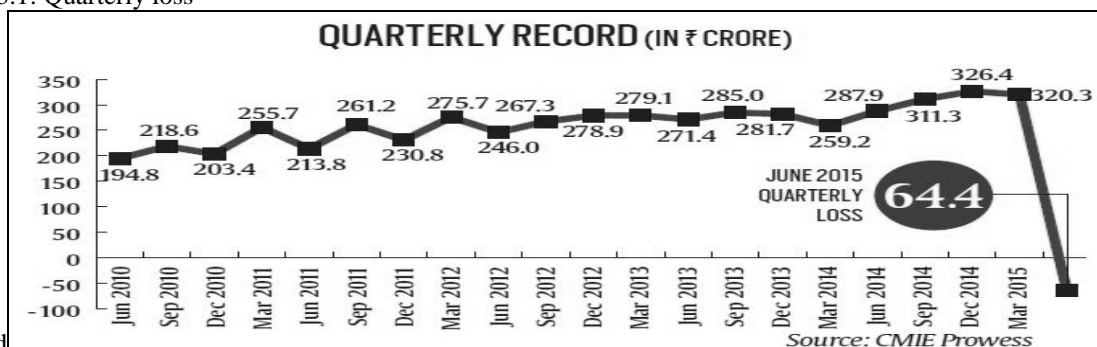
They tried to win the support of their consumers by stating that-

"the quality and safety of our products are the top priorities for our company. We have in place strict food safety and quality controls at our Maggi factories. We do not add MSG to maggi noodles, and glutamate, if present, may come from naturally occurring sources. We are surprised with the content supposedly found in the sample as we monitor the lead content regularly as a part of the regulatory requirements". [19]

Apart from its consumers, Nestle was also reconciling with its staff. The employees involved in the manufacturing of maggi were left stranded after the maggi ban, but the company did not ask them to leave the company, instead they were reallocated to the production of other products, or were involved in team building and other HR activities.

4.2. Impact of ban on Nestlé's profitability

Figure 3.1: Quarterly loss



suffered

Source- <http://indianexpress.com/article/business/business-others/the-maggi-effect-nestle-posts-first-loss-in-17-years/> (Indian Express Date- July30, 2015)

Nestle recorded for its first quarterly loss in the last 17 years (as shown in the figure 3.1). The loss came out as the result of the Maggi ban, Maggi accounts to 20% of the India's revenue. The ban not only affected the profit but also the revenue as the net overall sales reported a decline of 20.1 %. [20]

Apart from this the shares of Nestle India also suffered a setback, as after the ban the share prices started decreasing, also affecting the shareholding.

The detailed comparison of the quarterly result of June'15 with other quarters is given in figure 3.2

Figure 3.2- Comparison of the quarterly results

Nestle India

Standalone Quarterly Results	----- in Rs. Cr. -----				
	Jun '15	Mar '15	Dec '14	Sep '14	Jun '14
Net Sales/Income from operations	1,933.84	2,506.79	2,516.10	2,557.80	2,418.91
Other Operating Income	23.17	9.69	14.84	12.62	13.06
Total Income From Operations	1,957.01	2,516.48	2,530.94	2,570.42	2,431.97

Source - http://www.moneycontrol.com/stocks/company_info/print_main.php

The above figure shows that the Net sales decreased in the quarter June'15 as compared to the other quarters, thereby decreasing the "Total income from operation".

V. BAN NEARING IT'S CLOSURE

5.1. High Court's Judgement

Nestle challenged the ban imposed by FSSAI nationwide, on its product Maggi in Bombay High Court on 31st July 2015.

After hearing to both the petitioner (Nestle) and the respondents(FSSAI, CEO of FSSAI, Commissioner of food safety, and State of Maharashtra), High Court gave its judgement on 13th August 2015 , that Nestle will provide 5 sample of each batch which are in their possession to 3 accredited laboratories, which are-

- 1) Vimta Lab in Andhra Pradesh
- 2) Punjab Biotechnology Incubator, Agri & Food testing laboratory in Mohali
- 3) CEG Test House and Research Centre Private Limited in Jaipur. [1]

If the test results show that the lead is within the permissible limit (as claimed by the petitioner- Nestle) then the company can start its manufacturing process, the new products will also be tested in these laboratories and then if the lead is found to be within permissible limit, the company can sell it in the market.

5.2. Results of the Testing

Nestle India in a recent press release on 16th October 2015 stated that "We have received test results from all three laboratories mandated by the Hon'ble High Court to test the Maggi noodles sample. All the 90 samples, covering 6 variants, tested by these laboratories are clear with lead much below the permissible levels". [21]

The three accredited laboratories have passed the samples of Maggi, therefore Nestle India can now manufacture its product Maggi. After the sample from those manufactured articles are tested and cleared by the laboratories, the company can sell it in the market.

VI. INDISPENSIBLE VALUE OF FSSAI IN CONSUMER SAFETY

FSSAI is the apex food regulator body in India; it oversees the system of food regulations and standards of the Indian food market. With the passing years the importance of FSSAI in the market has increased due to the increasing malpractices and fraudulent nature of the food companies. Companies indulge in sub-standardization of their products to win over their competitors in the race of profit. Sub standardization enables them to cut their costs and increase their profits. The main sufferers in this act are consumers; it is their health which is at stake.

Consumer faces number of unethical practices by the manufacturers of the food articles, such as –

- Selling of sub-standard quality food articles
- Not providing all the needed information on the packet of the food article
- Mislabelling of the food article
- Selling of the food article not approved by the regulatory body
- Selling of food article which can be injurious to the health of consumer

Thus looking at the accelerating cases of misbranding, mislabelling, contamination, sub-standardization etc, the role of FSSAI becomes indispensable and significant to protect the consumers. It is through the various regulations and provisions such as provisions of licensing and registration, packaging and labelling, and the like, that the FSSAI certifies that the food articles sold by the food companies are safe and secure for the consumers. Ensuring safety and security of the health of the public is the prime responsibility and objective of FSSAI.

The case of “Maggi ban by FSSAI” brings light to the fact that FSSAI ensures that no product sold in the market should be unsafe, not baring even those which have gained immense public loyalty, like Nestlé India’s product Maggie noodles. Maggi Noodles consumption in India has risen to such an extent that it has gained the image of “being the third staple food of India alongside rice and lentils” , but when FSSAI tested and found it to be in violation with the regulations and being unsafe for the consumers, FSSAI banned it in the market. Thus overlooking the final outcome of the Maggi case, we can substantiate the significance of FSSAI in ensuring the consumer safety and protection.

VII. CONCLUSION

The paper discussed about the various aspects of the Maggi ban and the framework of FSSAI. The Maggi ban is nearing its closure, as the testing of the samples has revealed lead to be within permissible level. By the end of 2015 Maggi will return to the shelves, this will surely be the ‘sight for sore eyes’ when the consumers will finally be able to buy their favourite comfort-food. This incident has brought the FSSAI’s focus to some major issues, thus it is going to make some modifications in its framework, such as more stringent regulations, trained and skilled food officers, enhanced infrastructure of the laboratories, and the like.

Evaluation of the Maggi ban has evidenced the significance of FSSAI in the food industry. The ban brings out an important aspect of the regulator, which is safeguarding the consumers, besides monitoring the manufacturing, packaging, labelling and the like processes of the food companies, it identifies the health and safety risks for the consumers. The structure and organisation of FSSAI enables it to scrutinize the work process of food companies and identify any deceitful act, if undertaken.

Thus the FSSAI as a regulator plays two important functions, first is governing and directing the companies to follow regulations, and second is protecting the consumers. The figure 4 below shows FSSAI being the core element to both food companies and the consumer. The figure can be compared to the earth’s crust, Earth’s crust is made up of 3 layers; Crust being the outer most layer (it comprises of different types of rocks) , then Mantle is below the crust which supports the crust (by providing various minerals) , and the inner most is called the Core (it is the most powerful element in the three) [22]. Similarly in the figure below the outer most layer represents ‘Consumers’ , which are of different types with varying consumption needs and patterns. Then the second layer supporting the consumer is represented by ‘Food Companies’, this layer support the outer layer, i.e. companies support the consumers by manufacturing the products according to their needs. Lastly the inner most layer is represented by FSSAI, which is the most powerful of the three in terms of regulating and ensuring food safety.

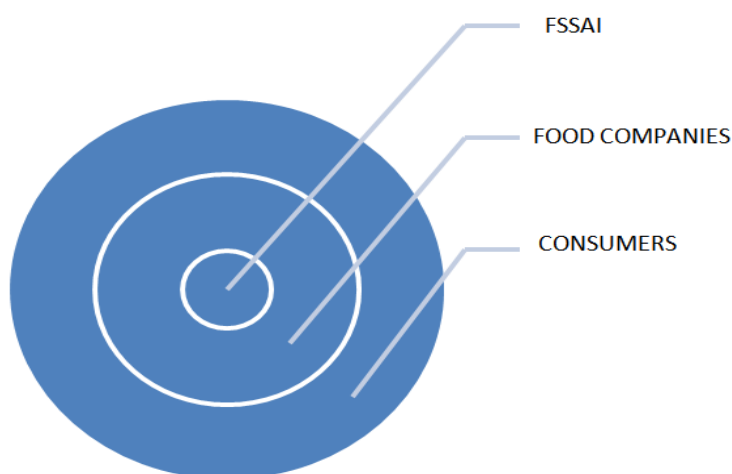


Figure 4: FSSAI being the core element

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