



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3806 OF 2026
Along With
INTERIM APPLICATION [ST.] NO. 7950 OF 2026
IN
WRIT PETITION NO. 3806 OF 2026

1) Hotel Alankar	]	
Through its Sole Proprietor	]	
Dipak Sopanrao Arbune.	]	
Having Address at MIL. No.33/B,	]	
Shaniwar Peth, Near S.T.Stand,	]	
A/p-Karad, Satara – 415110.	]	<u>...Petitioner.</u>

Versus

1) State of Maharashtra	]	
Through The Principal Secretary,	]	
Food and Drug Administration Department.	]	
2) The Commissioner,	]	
Food & Drug Administration,	]	
BKC, Mumbai -400051.	]	
3) Assistant Commissioner (Food)	]	
and Designated Officer,	]	
Food and Drug Administration (M.S.),	]	
Sadar Bazar, Satara – 415 001.	]	
4) I.S. Hawaldar, Food Safety Officer,	]	
Food and Drug Administration (M.S.),	]	
Satara – 415001.	]	
5) Union of India,	]	
Through the Secretary of Ministry of Health	]	
and Family Welfare.	]	
6) Food Safety and Standards Authority of	]	
India, New Delhi.	]	<u>...Respondents.</u>

Mr. Mayur Khandeparkar, Ms. Shubhra Swami, Ms. Meghna Vijan and Ms. Rohini i/b Abhay Bichakar for the Petitioner.

Ms. T. J. Kapre, AGP for the Respondent-State.

Mr. Rakesh Bhatkar for the Respondent No. 5.

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

Date : September 8, 2026.

JUDGMENT : (Per Sharmila U Deshmukh J):

1. **Rule.** Rule made returnable forthwith and with consent taken up for final disposal.
2. The challenge which was initially raised in the present petition was to the order of suspension of license dated 8th July 2026 issued by the Respondent No.3–Assistant Commissioner (Food) and Designated Officer and for revocation of the suspension of Petitioner’s FSSAI License in light of the 97% compliance recorded in the re-inspection report dated 31st July 2026.
3. During the pendency of the petition, the appeal filed by the Petitioner before the Appellate Authority against the order of suspension dated 8th July, 2026, came to be dismissed. By the captioned interim application, the Petitioner has sought leave to amend the petition to challenge the appellate authority’s order dated 19th August 2026 along with the suspension order dated 8th July 2026. Considering that the proposed amendment seeks to challenge the subsequent order

of dismissal of Appeal, interim application is allowed. Amendment to be carried out within a period of two weeks from today.

4. The facts as set out in the petition are that the Petitioner's establishment holds a valid license under the Food Safety and Standards Act, 2006 [for short "***the Food Safety Act***"], which was issued on 17th July 2022 and valid upto 16th July 2027. On 7th July 2026, the Respondent No.4-Food Safety Officer conducted a surprise inspection of the establishment of Petitioner and generated an inspection report recording defects, partial compliances, non compliances and allotted final score of 75 marks out of 110 marks, constituting 69% with the remark "non compliance". During inspection, food samples were drawn, seized and sealed for testing and analysis. On 8th July 2026, the Respondent No.3 passed an order of forthwith suspension of license granted to the Petitioner's establishment, exercising powers under Section 32(3) of the Food Safety Act directing the Petitioner to forthwith cease and desist from carrying on food business activity. Being aggrieved, the Petitioner preferred a statutory appeal under Section 32(4) of the Food Safety Act before the Respondent No.2. It is pleaded that the captioned Petition is being filed in view of the subsequent re-inspection of the Petitioner's establishment carried out by the Respondent No.3 wherein Petitioner scored 106 out of 110 marks i.e. 97%.

5. The amended pleading is that the Appellate Authority's order is inconsistent with the findings recorded in the re-inspection report dated 31st July, 2026. The Petitioner had taken steps for applying for modification of the license, but the online portal is locked by reason of the suspension of license. The non compliances recorded in the inspection of 7th July, 2026 were rectified and noted in the subsequent inspection of 31st July, 2026 warranting revocation of suspension.

6. In the reply affidavit, it is contended that the Petitioner had not submitted a response to the improvement notice, before the subsequent inspection conducted on 7th July, 2026, which disclosed deficiencies and circumstances requiring immediate statutory intervention in public health. The inspection revealed sale of products for which license was not obtained, unhygienic conditions on floor of establishment's production area, non segregation of storage and frying machine for vegetarian and non-vegetarian food items, non compliance with discharge norms, uncovered storage of food items and trash bins. The Food Analyst's report in respect of used cooking oil sample has tested "Unsafe". Subsequent to the passing of suspension order, during inspection conducted on 13th July, 2026, the Petitioner's establishment was found to be operational. During pendency of appeal, re-inspection was ordered on 31st July, 2026, when it was noticed that most of the deficiencies were rectified, however the business operations were

continued which is breach punishable under Section 55 of Food Safety Act and hence the Appeal came to be dismissed.

7. Mr. Khandeparkar, learned Counsel appearing for the Petitioner would submit that the impugned appellate order does not take into consideration the re-inspection report of 31st July 2026. He has taken this Court in detail through the order of appellate authority in order to contend that though submissions were canvassed as regards the re-inspection conducted on 31st July 2026, the findings and reasons take into consideration the suspension order dated 8th July 2026 and there is no consideration of re-inspection dated 31st July 2026. He would further point out that the observation as regards the Petitioner's establishment being operated even during the period of suspension would invite penalty under Sections 55 and 63 of the Food Safety Act, and not upholding the order of suspension. He would further point out that the Hon'ble Division Bench of of this Court (Nagpur Bench) in ***Wardha Tahsil Go-Dugdha Utpadak Sahakari Sangh Ltd, Wardha v. State of Maharashtra***¹ has considered identical deficiencies, as are noted in the present case and has held that those deficiencies do not fall in the category of exceptional circumstances.

8. *Per contra* Ms. Tejas Kapre, learned AGP would take this Court through the affidavit-in-reply filed on behalf of the Respondent Nos.1

¹ WP No. 4542 of 2026 dtd 7th July 2026.

to 4. She would submit that the circumstances leading to the suspension were serious breaches, as the establishment had earlier been inspected on 19th July, 2025 and violations of provisions under Part-2 and Part-5 of Schedule IV of the Food Safety and Standards (Licensing And Registration of Food Business) Regulations, 2011 had been noticed and an improvement notice dated 30th July 2025 had been issued to the Petitioner, to which there is no response. She would submit that there was subsequent inspection carried out on 7th July 2026 which disclosed further deficiencies and therefore suspension was imposed. She would point out that during the inspection it was observed that though the Petitioner's establishment had obtained license for sale of ready-to-eat food products, the Petitioner's establishment was found selling items such as liquor, cold drinks and packaged drinking water without the necessary product categories endorsed on the license, which constitutes serious violation.

9. She would point out paragraph 19 of the affidavit-in-reply to demonstrate the deficiencies noted during inspection on 7th July, 2026. She submits that the food samples collected in the inspection of 7th July 2026 were forwarded for analysis to the Food Analyst, which samples were reported as "unsafe". She submits that though the license was suspended, it was found that the business activity at Petitioner's establishment was continued. She would further submit that as there

was persistent breach of directions given by the licensing authority, which is punishable offence under Section 55 of the Food Safety Act, the appeal came to be dismissed. She has taken this Court in detail through the findings of the appellate authority as regards the non compliance by the Petitioner's establishment of Condition Nos.3, 4 and 7 of the license.

10. We have considered the submissions and perused the record.

11. The validity of the suspension order dated 8th July, 2026 has been upheld by the order of the appellate authority. The issue arising for consideration is whether the continued suspension is justified after the deficiencies are rectified as noted in the re-verification report of 31st July, 2026.

12. During the inspection carried out on 7th July, 2026, the Petitioner's establishment was found to be non compliant on various aspects as regards design, control of operations, maintenance and sanitation, personal hygiene and training, and, record keeping. Section 32 of the Food Safety Act, empowers the designated officer to serve an improvement notice upon failure to comply with the regulations and if the food operator fails to comply with the improvement notice, the license may be suspended.

13. The reply Affidavit pleads about the improvement notice dated 30th July, 2025 issued to the Petitioner. Section 32(1) of the Food Safety

Act provides for improvement notice to be issued on failure to comply with any regulations specifying the measures to be taken to secure compliance. Upon non compliance, the food business operator's license may be suspended. Sub-Section (3) of Section 32 of the Food Safety Act provides that if the food business operator still fails to comply with the improvement notice, the designated officer may, after giving the licensee an opportunity to show cause, cancel the license granted to him. The proviso to Sub-Section (3) of Section 32 of the Food Safety Act empowers the designated officer to suspend the license forthwith in the interest of public health for reasons to be recorded in writing.

14. In the present case, the suspension order dated 8th July, 2026 was passed in exercise of powers under the proviso to Section 32(3) of Food Safety Act i.e. in interest of public health, listing the following as detrimental to public health:

- (a) Sale of alcohol and other beverages without license resulting in violation of license Condition No 3.
- (b) Common frying machine and common storage for vegetarian and non vegetarian food items.
- (c) Black cooking oil after usage being discharged in drainage.

15. Considering the basis of suspension order, if the auto generated inspection report dated 7th July, 2026 is perused, it lists partial compliance in so far as suitability of cooking oil is concerned, non

compliance of proper segregation of raw, cooked vegetarian and non vegetarian food and other non compliances. The re-inspection report dated 31st July, 2026 shows compliance report of 97% with the continued non compliances in respect of the following:

Sr. No.	KOB name	Parameters	Inspection	Max Score	Score obtained.
7.	General catering	Food establishment has an updated FSSAI license and is displayed at a prominent location	Partial-compliance	2	1
8.	General catering	Food material tested either through internal laboratory or through an accredited lab, check for records.	Partial-Compliance	2	1
9.	---	----			
10.	General Catering	Potable water (meeting standards of IS:10500 & tested semi-annually with records maintained thereof) is used as product ingredient or in contact with food or food contact surface.	Partial compliance	4	2

16. The report of 31st July, 2026 indicates that there was compliance of the parameters under the heading “Control and Operation”, “Maintenance and Sanitation”, “Personal Hygiene” and “Training & Record keeping”. Mr. Khandeparkar, learned Counsel appearing for the Petitioner has handed over the revised food safety inspection check-list and the marking and grading system. The grading has been divided into 4 Grades, which is as under :

Grade	Status	Marks required.
A+	Compliance - Exemplar	90% & above.
A	Compliance - Satisfactory	80% - 89%
B	Needs improvement	50% - 79%
No Grade	Non compliance	Below 50%

17. As the Respondents themselves have awarded 97% marks to the Petitioner's establishment, the compliance, as per the Respondent's own grading is "exemplar". The license has been suspended on 8th July, 2026. The partial compliances as regards testing of food material and use of potable water can be assessed only if the establishment is permitted to continue its operation.

18. The impugned appellate order records the submission of the Respondents as regards the re-verification being conducted on 31st July, 2026 and that great majority of deficiencies were rectified. It was submitted that the re-verification reflects a total score of 106 out of 110, yet records as "non-compliance." It was submitted that there was non compliance of Condition No.3 i.e. sale of chilled and alcoholic beverages without corresponding food product category being registered in the license and operation of establishment during period of suspension.

19. The appellate authority considered the provisions of Section 3(1) (zz)(xi) of the Food Safety Act and that the food samples which were drawn after the inspection of 7th July 2026 were analysed by the food

analyst, which showed that the used cooking oil is beyond the excess ceiling fixed by the prescribed regulations. It further considered license condition No.7 and Schedule 4 standard and that Schedule 4 standard was not known to the establishment, non employment of technical person, violation of license Condition No.3 and operation during period of suspension.

20. The reason for continued suspension is based on finding of violation of License Condition No.3 (intimation of change in activities) and License Condition No.7 (sanitary and hygienic standards under Schedule-4) of Conditions of License, Regulation 2.1.14 of the Foods Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011, and unsafe finding of cooking oil in use.

21. It is surprising that having allotted 97% percentage certifying the compliance as “exemplar”, the appellate authority has continued the suspension. The appellate authority’s order does not disclose any consideration of the re-verification report of 31st July, 2026. The determination of continued suspension should have factored in the compliances which have been noted in the re-inspection report. The suitability of cooking oil, which was found to be of partial compliance in the report of 7th July, 2026, has been found to be compliant in the re-inspection report of 31st July, 2026. The analysis of the used cooking oil resulted in the same being found unsafe. The cooking oil was used

when the establishment was in operation, however, what was required to be ascertained is whether the non compliance of unsuitability of cooking oil continues after the suspension is revoked, for which opportunity is required to be given to the establishment. There cannot be continued suspension of license on that ground and it is not a case, where the Respondents have initiated proceedings for cancellation of license.

22. The statutory scheme of Section 32 of the Food Safety Act enjoins issuance of improvement notice for non compliance of any regulations and, upon failure, to suspend the license. The continued non compliance may be met with a show-cause notice and thereafter cancellation of license. It is only in case of harm to public health that the license may be suspended forthwith. The re-verification was conducted at the directions of the Commissioner of Food Safety. The purpose is to verify the compliances set out in the inspection report leading to suspension. The non consideration of the re-verification report makes the whole exercise of re-verification futile. The continued suspension, if any, can be ordered only on consideration of the re-verification report and on finding of continued non compliance.

23. In so far as violation of Condition Nos.3, 4 and 7 are concerned, the same reads as under:

"3. Inform authorities about any change or modifications in activities."

"4. Employ at least one technical person to supervise the production process. The person supervising the production process shall possess at least a degree in science with Chemistry/Bio-Chemistry / Food and Nutrition / Microbiology or a degree or diploma in food technology / dairy technology / Dairy Microbiology / Dairy Chemistry / Dairy Engineering / Oil Technology / Veterinary science / Hotel management and catering technology or any degree or diploma in any other discipline related to the specific requirement of the business from a recognised university or institute or equivalent."

"7. Maintain Factory's sanitary and hygienic standards and workers hygiene as specified in the Schedule-4 according to the category of food business."

24. The finding of the appellate authority as regards Condition No 7 is concerned is as under:

"5.3. License Condition No 7 and the Schedule 4 Standards: License Condition No.7 of the Conditions of License requires the establishment to maintain its sanitary and hygienic standards and workers hygiene as specified in Schedule 4, according to the category of food business, an obligation that is basic and continuing for an operating food service establishment. This gap is corroborated by the proceeding before this Authority on 04.08.2026 which record that Schedule IV was found to be "not known" to the establishment. An establishment whose own proprietor is unaware of Schedule 4 standards applicable to its business cannot be said to have demonstrated the sustained capacity for compliance that continuance of its license presupposes, irrespective of the marks scored on individual line items of the re-verification checklist."

25. The finding indicates that based on the proprietor's *viva voce*, the re-verification report of 31st July, 2026 has been disregarded, which is a course unknown to law. It is the establishment which is required to be

compliant with the Schedule-IV and was so found in the re-verification on 31st July, 2026 and not the proprietor's knowledge on the enactment.

26. Insofar as Condition No.4 as regards the employment of technical person is concerned, in the case of ***Wardha Tahsil Go-Dugdha Utpadak Sahakari Sangh Ltd, Wardha v. State of Maharashtra*** (supra), before the Nagpur Bench of this Court, the violation of licensing condition was part of the contravention alleged in that case including identical condition of employment of technical person. Noting the provisions of Section 18 of the Food Safety Act, the Court held that the risk management may relate to implementation of policies, control and active monitoring to mitigate, identify the risk and to prepare actionable mitigating balance and safety protocols to minimize control and eliminate those threats etc. It held that in that case the only reasonable ground to suspect that the food may present a risk to the human life was buttermilk because of use of industrial ice in the same and as far as other deficiencies were concerned, they do not fall in the category of exceptional circumstances.

27. The Hon'ble Division Bench did not consider the other deficiencies to constitute harm to public health for invocation of Section 32(3) of Food Safety Act, which will also apply in the present case.

28. Coming to violation of license condition No.3, the same requires the establishment to inform the licensing authorities about any change in its activities being the very condition that founded the original suspension order in respect of chilled and alcoholic beverages. It is difficult to accept that the sale of food product categories not covered by the license, by itself, would constitute harm to public health. It is pleaded that due to suspension, the online portal is locked and Petitioner cannot apply for modification of license. It is for this reason that the re-inspection report shows non compliance of updated FSSAI license. In any event, Section 63 of Food Safety Act prescribes penalty for carrying on business without license. It was open for the concerned authority to pass an order of penalty for such violation, however, the continued suspension is unwarranted.

29. The appellate order would indicate that one of the reasons for continued suspension was the operation of Petitioner's establishment during the period of suspension. Sections 55 of the Food Safety Act provide for penalty for failure to comply with the directions of the Food Safety Officer and for carrying out business without license providing for penalty of fine and not continued suspension. The reply Affidavit of Respondents itself refers to Section 55 and 63 of Food Safety Act, and instead of invoking the relevant provisions, have continued with the suspension.

30. The object of suspension of license as mandated by the proviso to Sub-Section (3) of Section 32 of the Food Safety Act is to protect the public health. The suspension of license for non compliances, which have the propensity to harm public health, cannot be continued infinitely. The consequence of compliance of the deficiencies should, in our view, result in revocation of the suspension of license and continued monitoring as mandated by law to ensure statutory compliances. The establishment cannot be put under suspension even after obtaining “exemplar” compliance. The suspension order has been continued by appellate authority on grounds which are unsustainable in so far as harm to public health is concerned.

31. In event there was continued operation of the establishment during the period of suspension, it is open for the concerned authority to adopt proceedings for imposition of penalty, as per Sections 55 and 63 of Food Safety Act. It is open for the Respondents to monitor the compliances and take necessary steps in accordance with law, in the event, future non compliances are noted. As the Petitioner was found to be carrying out sale of food products which are not endorsed on the license, the Petitioner through its proprietor is directed to file an undertaking in this Court within a period of seven days that the food products, which are not endorsed on the license will not be sold.

32. In light of the discussion above, the impugned order of appellate authority dated 19th August, 2026 is quashed and set aside. The suspension order dated 8th July, 2026 is revoked and the license is restored. The Petition succeeds. Rule is made absolute in above terms.

33. Interim application stands disposed of.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]