

FOOD SAFETY APPELLATE TRIBUNAL
JAIPUR, RAJASTHAN

APPEAL NO.FA/0003/2017
Yogesh Mittal & Ors Vs. Chief Food Safety Officer & Ors

APPEAL NO.FA/0004/2017
Satyanarayan & Anr. Vs. Shri Murari Lal Sharma, Food Safety
Officer

APPEAL NO.FA/0005/2017
Smt. Shanti Devi Vs. Shri Murari Lal Sharma, Food Safety
Officer

APPEAL NO.FA/0006/2017
Satyanarayan Vs. Shri Murari Lal Sharma, Food Safety
Officer

APPEAL NO.FA/0016/2017
Gopal Sharma Vs. State of Rajasthan

APPEAL NO.FA/0017/2017
Shri S.M. Tripathi & Anr Vs. Shri Revat Singh, Food Safety Officer
& Ors

APPEAL NO.FA/0020-21-22-23/2017
Ram Singh Gurjar & Anr. Vs. Food Safety Officer

Present :-

Shri G.P. Sharma, advocate, learned Amicus Curiae

Shri Shambhu Dayal Gothwal, Advocate for appellant in Appeal
No.FA/0004/2017, FA/0005/2017, FA/0006/2017

Shri Archit Bohra, advocate for appellant in Appeal No.FA/0017/2017

Shri Keshav Agrawal, Advocate with Shri Vikram S.Yadav, Advocates for
appellant in Appeal No.FA/0020/2017, FA/0021/2017, FA/0022/2017,
FA/0023/2017

Shri Deepak Saravgi, advocate for appellant in Appeal No.FA/0003/2017

Shri Mayank Gupta, Advocate for appellant in Appeal No.FA/0016/2017

Shri V.D. Gathala, Advocate for respondent

ORDER

Date – 11.05.2017

It has been brought to the notice of this Appellate Tribunal by the Registrar of the Tribunal that many appellants have filed consolidated appeal against the order passed against them under Section 68 of the Food Safety and Standard Act 2006 (hereinafter will be referred as 'The Act'). It was also submitted by the Registrar that not only this, appellants have also submitted a consolidated fee in these appeals. As per Registrar of this Appellate Tribunal there is divergence of opinion between the office of Registrar and the learned advocates, on these points.

2. To resolve these issues, following points for determination were framed:-

- (i) Whether a consolidated appeal is permissible under the Act?
 - (ii) Whether cause of action against the adjudication under Section 68 of the Act is individual/personal/separate or common?
 - (iii) How the fee under Rule 3.3.12 of Rules of 2011 should be computed?
3. A general notice was issued to all the concerned, so also to the learned members of the Bar.
 4. Arguments on the above points for determination were heard.
 5. Record of the different cases thoroughly examined.
 6. The relevant provisions of law were scanned properly.
 7. Shri Archit Bohra, Id. Counsel in Case No.17/2017 submitted that a consolidated appeal can be filed in cases where penalty imposed by the Adjudicating Officer under Section 68 of the Act is also consolidated.
 8. Id. Counsel would submit that in cases of offence committed by companies, procedure laid down in Section 68 of the Act will apply, and if consolidated penalty is imposed, in that case, a consolidated appeal shall be filed by the person who at the time the offence was committed was incharge of, and was responsible to the company for the conduct of the business of the company as well as the company.
 9. Shri Keshav Agarwal, Id. Advocate in Appeal No.0020/2017, 21/2017, 22/2017 & 23/2017 would argue that, if, penalty imposed by adjudicating officer under Section 68 of the Act is consolidated in that case a consolidated appeal can be filed.
 10. Shri Mayank Gupta, Id. Advocate in Appeal No.16/2017 would submit that since only one sample is generally taken of the product and consolidated action is taken in furtherance of such inspection, therefore, consolidated appeal can be filed.
 11. Id. Amicus Curiae Shri G.P. Sharma, advocate would submit that cause of action against the adjudication under Section 68 of the Act is individual therefore separate appeal should be filed by the aggrieved person. Id. Amicus Curiae would further submit that, if, consolidated appeal is preferred by all the aggrieved parties, who were parties before the Adjudicating Officer, in that case, separate fee should be paid under Rule 3.3.12 of the Food Safety & Standard Rules 2011 (hereinafter referred as 'Rules of 2011').
 12. Shri G.P. Sharma, Id. Amicus Curiae further submitted that as per Section 27 of the Act, liability of manufactures, packers, wholesalers, distributors and sellers is separate, their accountability is defined under this Section therefore in no case a consolidated appeal can be filed with consolidated fee.
 13. As per learned Amicus Curiae, in cases of offences committed by companies, a consolidated appeal can be filed.
 14. Shri V.D. Gathala, Id. Dy. GA appearing on behalf of State would subscribe to the submissions made by Id. Amicus Curiae.
 15. It is just and proper to reproduce here relevant provisions of the Act and Rules of 2011.

Section 26. Responsibilities of the food business operator.- (1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food—

- (i) which is unsafe; or
- (ii) which is misbranded or sub-standard or contains extraneous matter; or
- (iii) for which a licence is required, except in accordance with the conditions of the licence; or
- (iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or
- (v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor:

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe:

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe.

Section 27 of the Act is reproduced as under:-

Liability of manufacturers, packers, wholesalers, distributors and sellers.—(1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is—

- (a) supplied after the date of its expiry; or
- (b) stored or supplied in violation of the safety instructions of the manufacturer; or
- (c) unsafe or misbranded; or
- (d) unidentifiable of manufacturer from whom the article of food have been received; or
- (e) stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or
- (f) received by him with knowledge of being unsafe.

(3) The seller shall be liable under this Act for any article of food which is—

- (a) sold after the date of its expiry; or
- (b) handled or kept in unhygienic conditions; or
- (c) misbranded; or
- (d) unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or
- (e) received by him with knowledge of being unsafe.

Relevant portion of Section 71 is as under:-

Section 71. Procedure and powers of Tribunal.— (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.
.....”

16. It is trite law, that appeal is always preferred by the aggrieved person. Cause of action against the adjudication under Section

68 of the Act is individual. It cannot be said that persons arraigned as non-applicants before the Adjudicating Officer have a common grievance against the order passed against them under Section 68 of the Act. It is possible that some of the non-applicant may not prefer to file appeal. Other non-applicant can file appeal and such appeal is maintainable, therefore, it cannot be said that grievance against the order passed under Section 68 of the Act is common. Accountability/ liability under the Act is individual, therefore, cause of action against the order under Section 68 of the Act is also individual. Therefore, a consolidated appeal cannot be filed by the persons who are aggrieved by the order under Section 68 of the Act with consolidated computation of fee.

17. If all the aggrieved persons want to file a common appeal, in that case, they have to compute the fee payable under the Rules of 2011 individually. In that case, a common appeal can be preferred. It is possible that different persons aggrieved by the order under Section 68 of the Act may prefer to file separate appeal or may file appeal at different point of time. All those appeals shall be heard jointly and will be disposed by a common order.
18. The contention that in cases falling under Section 66 of the Act, a common appeal can be filed with consolidated fee is also untenable.

Section 66 of the Act reads as under: -

66. Offences by companies.—(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "Company" means anybody corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm, means a partner in the firm."

19. From the bare reading of the above provision, it is crystal clear that person who at the time of the offence was Incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Meaning thereby, person responsible for the affairs of the business of the company is accountable for

the affairs of the business of the company as well as the company, therefore, prosecution shall be launched against the company as well as the person responsible for the affairs of the business of the company at the time of the offence. This provision is not identical with Section 305 of the Code of Criminal Procedure 1973. Therefore, in cases falling under Section 66 of the Act, if, separate penalty is imposed against the person responsible for the affairs of the business at the time of offence as well as a company in that case, a common appeal can be filed but fee under Rules of 2011 shall be computed separately.

20. Regarding computation of fee under the Rules of 2011, it was submitted by the Id. Counsels appearing on behalf of appellants that there is some confusion and anomaly in the fee. Ld. Counsels would submit that if penalty imposed under Section 68 of the Act is less than Rs.10,000/- then amount of fee payable is Rs.500/-; if penalty imposed is Rs.10000/- or more but less than Rs.1,00,000/-, amount of fee payable is Rs.1500/- and if amount of penalty imposed is Rs.1,00,000/- or more, Rs.1500/- plus Rs.500/- for every additional one lakh of penalty or fraction thereof subject to a maximum of Rs.5000/-.

Relevant rule is as under:-

3.3.12. Fee. - (i) Every Memorandum of appeal shall be accompanied with a fee provided in sub-rule (ii) and such fee shall be remitted in the form of crossed demand draft drawn on a nationalized bank in favour of "Registrar, Food Safety Appellate Tribunal" payable at the station where the Appellate Tribunal is located.

(ii) The amount of fee payable in respect of appeal against adjudication orders passed under section 68 of the Act shall be as follows:

Sl No.	Amount of penalty imposed	Amount of fee payable
1.	Less than Rupees10,000/-	Rs. 500
2.	Rupees Ten thousand or more but less than Rupees One Lakh	Rs.1,500
3.	Rupees One Lakh or More	Rs.1500 plus Rupees 500 for every additional one lakh of penalty or fraction thereof subject to a maximum of Rs.5,000

21. In considered opinion of this Tribunal, there is no confusion or anomaly in the rule. Computation of fee can be properly explained as under: -

SI No.	Amount of penalty imposed	Amount of fee payable
1.	Less than Rs.10,000/- i.e. upto Rs.9,999/-	Rs. 500/-
2.	Rs.10,000/- to Rs.99,999/-	Rs.1,500/-
3.	Rs.1,00,000/- to Rs.1,99,999/-	Rs.1500/- + Rs.500/- i.e. Rs.2000/-
4.	Rs.2,00,000/- to Rs.2,99,999/-	Rs.1500/- + Rs.500/- + Rs.500/- i.e. Rs.2500/-
5.	Rs.3,00,000/- to Rs.3,99,999/-	Rs.1500/- + Rs.500/- + Rs.500/- + Rs.500/- i.e. Rs.3000/-
6.	Rs.4,00,000/- to Rs.4,99,999/-	Rs.1500/- + Rs.500/-

		+ Rs.500/- + Rs.500/- + Rs.500/- i.e. Rs.3500/-
7	Rs.5,00,000/- to Rs.5,99,999/-	Rs.1500/- + Rs.500/- + Rs.500/- + Rs.500/- + Rs.500/- +Rs.500/- i.e. Rs.4000/-
8.	Rs.6,00,000/- to Rs.6,99,999/-	Rs.1500/- + Rs.500/- + Rs.500/- + Rs.500/- + Rs.500/- +Rs.500/- + Rs.500/- i.e. Rs.4500/-
9.	Rs.7,00,000/- to Rs.7,99,999/-	Rs.1500/- + Rs.500/- + Rs.500/- + Rs.500/- + Rs.500/- +Rs.500/- + Rs.500/- +Rs.500/- i.e. Rs.5000/-
10.	Rs.8,00,000 to any amount	Rs.5000/- (fix)

22. It is incumbent upon all the Adjudicating Officer to mention in their order under Section 68 of the Act, the amount of penalty separately against each non-applicant. A consolidated penalty against all the non-applicants is impermissible under the law.
23. Therefore, all those cases where Adjudicating Officer(s) have imposed a consolidated penalty shall be remitted to the concerned Adjudicating Officer for compliance of this order. Such compliance should be made within 10 working days from the date of receipt of this order.
24. It is also noticed that title of the case before Adjudicating Officer is not fully reflected in the appeal, therefore, it is also enjoined upon all the appellants that, if, appeal is preferred by one of the non-applicant, in that case, all the persons who were non-applicants before the Adjudicating Officer should be arraigned as pro forma respondents.
25. It is also made clear that every substantial pleading or original application should be signed by the party concerned supported with affidavit. However, a routine interlocutory application can be submitted by the advocate of the party without any affidavit.
26. This tribunal appreciates the assistance rendered by Id. Amicus Curiae Shri G.P. Sharma, advocate.
27. This order shall apply on all the pending appeals.
28. Registrar shall examine new appeals in light this order.
29. Before listing every pending appeal shall be first examined in light of this order.
30. Order accordingly.

Order pronounced on May 11, 2017.

(Umesh Kumar Sharma)
 Presiding Officer