

**FOOD SAFETY APPELLATE TRIBUNAL
JAIPUR, RAJASTHAN**

APPEAL NO.FA/0014/2017

1. Rattilal Jyotaram Prajapati S/o Shri Jyotaram Prajapati, M/s Sabarkantha District Cooperative Milk Producers Union Ltd. Sabar Dairy, Himmat Nagar, Gujarat, presently R/o Prabhuji Dairy Food Processors Pvt. Ltd., Manoharpur, Delhi Road, N.H.08, Jaipur, R/o Vill. & Post Gabat, The. Bayad, District Sanwarkantha, Gujarat
2. Ratnesh Kumar Yadav S/o Deena Nath Yadav, Sabar Chiling Centre, Maruti Nandan Ice Factory, Shrimadhampur, District Sikar 332715 R/o Rachanpur, Vill. Baghedhi Jandhani Bazar, Allahabad, U.P.-212401
3. Ratansheel Sukhchand Khandekar S/o Shri Sukhchand Khandekar, Sabarkantha District Cooperative Milk Producers Union Ltd. presently R/o Maruti Nandan Ice Factory, Shrimadhampur, District Sikar, Rajasthan, R/o Plot No.128, Vishal Layout Motha Indora, Jaripatka, S.A. Nagpur Maharashtra-440014
4. M/s Sabarkantha District Cooperative Milk Producers Union Ltd., Sub Post Boriya, Himmat Nagar-383006 Gujarat
5. Mahesh Kumar S/o Shri Ramavatar, M/s Prabhuji Dairy Food Processors Pvt. Ltd., Manoharpur, Delhi Road, N.H.08, Jaipur, R/o A-2/69, Bhalasva, J.J. Colony, Delhi-110042
6. M/s Prabhuji Dairy Food Processors Pvt. Ltd., Manoharpur, Delhi Road, N.H.08, Jaipur

--APPELLANTS

Versus

State of Rajasthan, Sunil Kumar Garg, Food Safety Officer, Office of Chief Medical and Health Officer, Jaipur-I

--RESPONDENT

Present :-

Shri Mayank Gupta, Advocate for Appellants
Shri V.D. Gathala, Advocate for Respondent

JUDGMENT

Date – 26.07.2017

This appeal is preferred by the appellants under Section 70 of the Food Safety and Standards Act 2006 (hereinafter referred as 'Act of 2006') against the order dated 26.10.2015 passed by Shri Virendra Singh, Adjudicating Officer/ Additional District

Magistrate, Kotputli, (Jaipur) Rajasthan in Case No.27/2015 in exercise of powers under Section 68 (2) of the Act of 2006 whereby a consolidated penalty of Rs.3,00,000/- was imposed against appellants.

2. This tribunal was created vide notification F.34(9)M&H/Gr.-3/2012 dated 24.07.2015, but tribunal became functional on 01.03.2017. Therefore, appellant approached Hon'ble Rajasthan High Court Bench Jaipur for appropriate remedy. Thereafter, SB Civil Writ Petition No.17869/2015 was withdrawn with liberty to approach this tribunal on 27.02.2017. This appeal was preferred in this tribunal online on 09.03.2017 and submitted appeal before Registrar on 22.03.2017, therefore, appeal is within limitation.
3. During pendency of appeal, on 08.05.2017, following order was passed:-

"Heard.

It is difficult to ascertain correct import of the impugned order of Adjudicating Officer dated 26.10.2015.

Case is remitted to Adjudicating Officer i.e. Additional District Magistrate, Kotputli, Jaipur with the direction to clarify whether penalty imposed against the non-applicant is consolidated or individual.

In case it is consolidated then Adjudicating Officer is further directed to impose penalty separately against each non-applicant.

Appellant is directed to remain present before the Adjudicating Officer on 19.05.2017. Thereafter, compliance shall be made on or before 26.05.2017.

Put up after four weeks."

4. In compliance to the order, Adjudicating Officer vide order dated 25.05.2017 imposed the penalty of Rs.2,00,000/- against appellant no.4. Rs.1,00,000/- against appellant no.6.
5. On 28.04.2015, Shri Sunil Kumar Garg, Food Safety Officer, Jaipur filed a complaint against the appellants stating therein that on 18.06.2014 he took sample of mixed milk (Sample No.E1455) from M/s Sabarkantha District Cooperative Milk Producers Union Ltd., working in name and style of M/s Prabhuji Dairy Food Process Pvt. Ltd.
6. It is alleged that non-applicants (appellants) were selling milk to the public at large after chilling and processing. Sample was taken from a tanker containing 15000 Litre mixed milk.
7. Sample was sent for analysis. Same was found sub-standard vide report of State Central Public Health Laboratory Jaipur dated 27.08.2014.

8. Thereafter, a request to send sample for analysis to Referral Laboratory Ghaziabad was made by appellant no.1 Rattilal Jyotaram Prajapati. Therefore, Food Sample No.E1455 of mixed milk was sent to Referral Laboratory Ghaziabad for analysis. Same was also found sub-standard by the Referral Laboratory Ghaziabad.
9. After hearing the parties, impugned order was passed against the appellant.
10. It is alleged that there is vast variance between the report of the Food Laboratory at Jaipur and the Central Laboratory at Ghaziabad. Therefore, in the interest of justice, it was incumbent upon the Adjudicating Officer to call for additional testing report of the sample.
11. It is stated that sample obtained by the respondent was not a homogenous and representative sample of mixed milk; because, correct process of sampling of milk was not followed by the respondent Food Safety Officer. Sample was collected without stirring the entire milk stored in the tanker.
12. It is alleged that variance in report of State Central Public Health Laboratory Jaipur and Referral Laboratory Ghaziabad is due to faulty collection of sample.
13. Adjudicating officer should have relied upon the analysis report of the appellants, which is being done at every level of chilling and processing of food product.
14. Arguments heard. Record of the case thoroughly scanned; meticulously analysed the relevant provisions of law.
15. Shri Mayank Gupta, learned counsel for appellants would reiterate the grounds taken in appeal.
16. Shri V.D. Gathala, learned counsel for respondent supported the impugned order.
17. **Point for determination**
Whether, learned Adjudicating Officer Kotputli committed an error of law and fact in holding appellants guilty of violation of Regulation 1.2.10 and 2.1.1 of The food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011 (herein after referred as 'Regulations of 2011')?

18. **Decision**

Decided against the appellants

Reasons for decision

19. Since appellants preferred an appeal against the report of Food Analyst Rajasthan Jaipur before the Designated Officer and sample was referred to the Referral Food Laboratory i.e. Central Food Laboratory Ghaziabad, therefore, report of the Referral Laboratory Ghaziabad supersedes the report of State Central Public Health Laboratory, Jaipur.
20. As per report of Referral Food Laboratory, Ghaziabad percentage of milk fat was 3.2%, whereas, as per prescribed standard, it should be 4.5% Minimum (Prescribed standards as per Regulation No.2.1.1 of Regulations of 2011).
21. Sample was positive for the presence of skimmed milk powder.
22. Addition of skimmed milk powder is not permitted under Regulation 1.2.10 of Regulations of 2011 which reads as under:-
- “Milk is the normal mammary secretion derived from complete milking of healthy milch animal without **either addition thereto or extraction therefrom** unless otherwise provided in these regulations. It shall be free from colostrum. Milk of different classes and of different designations shall conform to the standards laid down in the Table below in 2.1.1:1”*
23. Skimmed milk is the milk from which the cream has been removed.
24. There is no force in the argument of Shri Mayank Gupta, learned advocate for appellants that sample taken was not a homogenous and representative sample; because, entire milk of the tanker was not stirred (churned) before taking the sample.
25. It cannot be said that 15000 Litre of mixed milk was not homogenous. Arguments can be overstretched that when tanker was filled with mixed milk, that milk might not have been homogenous. What is the procedure of filing the chilled milk in the tanker etc. etc.
26. Learned counsel for the appellants placed reliance upon 2002 CriLJ 2066, *Chhajoo V. State (Allahabad)* whereby, it was held that sample of milk should be homogenous and representative. In this case, Food Inspector took the sample from a tanki of 40 litre capacity containing 10 Litre milk in it. Quantity of purchased milk was 660 ml. only. In that case, the cow milk was found in deficit of non fatty solids.

27. The Apex Court in the case of Food Inspector Municipal Corporation Baroda V. M.R.Sharma, AIR 1983 Supreme Court 176 held as below:-

"We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has the prescribed content, the sample must be homogenous and representative so that the Analyst can furnish reliable proof of the nature and content of the articles of the food under analysis."

28. In a tanker containing 15000 litre of mixed milk looking to the shape of tanker, it cannot be said even distinctly that, there is a possibility of fat settling on the top of the tanker. Therefore, the sample taken by the Food Safety Officer Jaipur-I was homogenous and representative.
29. More-so, when sample was also found sub-standard due to presence of skimmed milk; it cannot be said that presence of skimmed milk in the sample was detected, because, sample taken was not homogenous. Skimmed milk is always added in the milk/ mixed milk.
30. There is no procedure to stir the entire 15000 litre mixed milk of tanker. Therefore, the quantity of 2 Litre sample taken by the Food Safety Officer Jaipur-I was homogenous & representative.
31. As per the analysis report of Referral Laboratory Ghaziabad, sample of the mixed milk was sub-standard. Because, it does not conform to the regulation No.2.1.1(1) of Regulations of 2011.
32. So far as Section 49 of the Act of 2006 is concerned, it is applicable only when amount of gain or unfair advantage made as a result of the contravention is quantifiable. In the present case, it cannot be said that amount of gain or unfair advantage made as a result of the contravention is quantifiable.
33. As per Section 49 (b) & (c) of the Act of 2006 while adjudging the quantum of penalty, the amount of loss caused or likely to cause to any person as a result of the contravention and the repetitive nature of the contravention shall also be considered.
34. Amount of loss in nutrition to the consumers of the mixed milk is immeasurable. More-so, such loss of nutrition is perennial. Consumers are also unaware of such nutritional deficiency. It is a betrayal of faith by the manufacturer of the mixed milk. Therefore, in totality of circumstances, penalty imposed by the adjudicating officer cannot be held excessive.

35. No other argument was advanced before me except the arguments discussed hereinabove.
36. From the aforesaid discussion, it is crystal clear that appeal filed by the appellants is devoid of merit, deserves to be dismissed, hence dismissed.

ORDER

37. Appeal against the order of learned Adjudicating Officer Kotputli dated 26.10.2015 in Complaint Case No.27/2015 and revised order dated 25.05.2017 in Complaint Case No.39/2017, titled Sunil Kumar Garg Food Safety Officer Vs. Rattilal Jyotaram Prajapati & Ors is dismissed. Impugned orders passed by the learned Adjudicating Officer Kotputli (Jaipur) are affirmed.
38. Appellants are directed to comply with the impugned order forthwith.
39. Registrar to provide a certified copy of this order to the appellants without any cost.
40. Pronounced on 26.07.2017.

(Umesh Kumar Sharma)
Presiding Officer