

**FOOD SAFETY APPELLATE TRIBUNAL  
JAIPUR, RAJASTHAN**

**Appeal Filing No. 122017116**

1. Nitin Goyal S/o Sh. Shiv Kumar Goyal, aged about 38 years, R/o Kota Road, Baran; Owner of M/s Grahasthi Family Shop @ Grahasthi Departmental Store, Kota Road, Baran
2. Ramesh Singh Rawat, Nominee M/s Hindustan Coca-Cola Beverages Private Ltd., Plot No.SP-39-40, RIICO Industrial Area, Kaladera, Jaipur-303801, Rajasthan
3. Hindustan Coca-Cola Beverages Private Ltd., Plot No.SP-39-40, RIICO Industrial Area, Kaladera, Jaipur-303801, Rajasthan

--APPELLANTS

Versus

1. State of Rajasthan through the Commissioner, Food Safety Rajasthan, Jaipur
2. Sh. Rajesh Kumar Ramchandani, Food Safety Officer, O/o Chief Medical and Health Officer, Baran (Rajasthan)

--RESPONDENTS

Present :-

Shri Ashish Tak, Advocate for Appellants  
Shri V.D. Gathala, Advocate for Respondent

**ORDER**

Date - 13.12.2017

This appeal is preferred against interlocutory order dated 3.10.2017 of learned Adjudicating Officer, Baran passed in Case No.10/2017.

2. Food Safety Officer, Baran submitted complaint against the appellants stating therein violation of sub-section 2(2) of section 26 of Food Safety and Standards Act 2006 (hereinafter will be referred as 'Act of 2006')
3. In course of inquiry, an application was submitted by the appellant with the request to summon FSO and DO for cross examination. The same was rejected by impugned order in view of Rule 3.1.1(8), (10) & (11) of Food Safety & Standard Rules 2011 (hereinafter referred as 'Rules of 2011').

4. Office of this tribunal has raised an objection that appeal is not maintainable because it is preferred against an interlocutory order.
5. Heard learned counsels for the parties on point of admission.
6. Shri Ashish Tak, learned counsel for the appellant would argue that since cross examination of evidence relied upon by the complainant is a substantive right, which has been denied by the learned Adjudicating Office. Therefore, appeal is maintainable against such order.
7. Shri V.D. Gathala, learned counsel for contesting respondent submitted that since appeal is preferred against interlocutory order, therefore, appeal is not maintainable; because, no final order under Section 68 of the Act of 2006 has been passed by learned Adjudicating Officer.
8. According to learned counsel for appellant, this appeal is maintainable.
9. I have gone through the authorities submitted by learned counsel for the appellant and also perused relevant provisions of law.
10. For ready reference Section 68, 70 and 71 of the Act of 2006 are reproduced as under:-

**68. Adjudication.**—For the purposes of adjudication under this Chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

(2) The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

(3) The Adjudicating Officer shall have the powers of a civil court and—

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) While adjudicating the quantum of penalty under this Chapter, the Adjudicating Officer shall have due regard to the guidelines specified in section 49.

**70. Establishment of Food Safety Appellate Tribunal.**—

The Central Government or as the case may be, the State

Government may, by notification, establish one or more tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decisions of the Adjudicating Officer under section 68.

(2) The Central Government or the State Government, as the case may be, shall prescribe, the matters and areas in relation to which the Tribunal may exercise jurisdiction.

(3) The Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Tribunal) to be appointed, by notification, by the Central Government or the State Government, as the case may be:

Provided that, no person shall be qualified for appointment as a Presiding Officer to the Tribunal unless he is or has been a District Judge.

(4) The qualifications, appointment, term of office, salary and allowances, resignation and removal of the Presiding Officer shall be such as may be prescribed by the Central Government.

(5) The procedure of appeal and powers of the Tribunal shall be such as may be prescribed by the Central Government.

**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.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents or other electronic records;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) any other matter which may be prescribed by the Central Government.

(3) Every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), it shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to represent his case before the Tribunal.

(5) The provisions of the Limitation Act, 1963 (36 of 1963), shall, except as otherwise provided in this Act, apply to an appeal made to the Tribunal.

(6) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty

days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Relevant rules of Food Safety and Standards Rules 2011 (hereinafter referred as 'Rules of 2011') are also reproduced as under:-

**3.1.2: Order of the Adjudicating Officer and matters relating thereto**

1. If, upon consideration of the evidence produced before the Adjudicating Officer, the Adjudicating Officer is satisfied that the person or persons or any of them against whom the inquiry has been conducted, has become liable to penalty and/or any suitable administrative action under any of the sections referred to in Rule 3.1.1. (5) he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of the relevant section or sections of the Act.

2. If however, the Adjudicating Officer is satisfied that the person or persons or any of them against whom the inquiry has been conducted for the contravention of provisions of the Act, has or have not been proved beyond doubt, the Adjudicating Officer shall dismiss the case.

3. Every order made under Rule 3.1.2.(1) shall specify the provisions of the Act or the rules or the regulations in respect of which the offence has taken place and shall contain brief reasons for such decision. While imposing monetary penalty the Adjudicating Officer shall have due regard to the provisions of section 49 of the Act. Such penalty will be remitted in the form of a crossed demand draft drawn on a nationalized bank in favour of "Adjudicating Officer, .....District" payable at the station where the Adjudicating officer is located.

4. Every such order shall be dated and signed by the Adjudicating Officer.

5. The Adjudicating Officer shall send a copy of the order made under Rule 3.1.2 to the person or persons against whom the inquiry was conducted and the Food Safety Officer who has filed the application for adjudication.

6. A notice or an order issued under these rules shall be served on the person or the persons against whom the adjudication proceedings were held or inquiry has been conducted, in any of the following manner:

(i) by delivering or tendering it to that person or his duly authorized representative or

(ii) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on or last carried on, business or personally works or last worked for gain or

(iii) if it cannot be served in the manner specified under Rule 3.1.2 (6) (i) or (ii) by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided or carried on business or personally works or

has worked for gain and written report thereof should be witnessed by two persons.

### **3.3: Procedure for Appeal to Appellate Tribunal and Connected matters therewith**

#### **3.3.1 Appeal to Appellate tribunal**

1. Limitation for filing appeal: Every appeal under section 70 of the Act, arising out of a decision of the Adjudicating Officer appointed under section 68 of the Act, shall be filed within a period of 30 days from the date on which the copy of the order against which the appeal is filed, is received by the appellant. Provided, however that the Appellate Tribunal may allow a maximum of another 30 days to entertain an appeal if it is satisfied that there was sufficient cause for not filing the appeal within first 30 days.

#### 2. Form and procedure of appeal

(i) A memorandum of appeal shall be presented in Form X by any aggrieved person in the registry of the Appellate Tribunal or shall be sent by registered post addressed to the Registrar.

(ii) A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it is received in the registry.

#### 3. Contents of Memorandum of Appeal

(i) Every Memorandum of Appeal filed under Rule 3.3.1 (2) shall set forth concisely under distinct heads, the grounds of such appeal and such grounds shall be numbered consecutively.

(ii) It shall not be necessary to present separate memorandum of appeal to seek interim order or direction, if the same is prayed for in the Memorandum of Appeal.

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 Rupees 10,000/-	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

11. This tribunal is empowered to hear appeals from the decision of the adjudicating officer under Section 68 of the Act of 2006. Under Section 68 of the Act of 2006 adjudicating officer is empower to impose such penalty as he thinks fit in accordance with the provisions relating to the offence provided adjudicating officer is satisfied after giving a person a reasonable opportunity for making representation in the matter that a person has committed the contravention of provisions of the Act of 2006 or the rules or the regulations made thereunder.

12. Adjudicating officer is also empowered to pass order of penalty or any suitable action under any of the Section referred to in Rule 3.1.1(5) of Rules of 2011.
13. Adjudicating officer is also empowered to dismiss the case.
14. Person aggrieved by the order/ decision under Section 68 of the Act of 2006 can prefer an appeal under Section 70 of the Act of 2006.
15. There is no such provision under Section 68 or under Section 70 of the Act of 2006 which permits appeal against any order including interlocutory order passed by the Adjudicating Officer during course of inquiry under Section 68 of the Act of 2006; whereas, section 71(6) of the Act of 2006 permits appeal against any decision or order of the appellate tribunal.
16. Reliance was placed by learned advocate on following authorities:-

- (i) 2016(1) FAC 416, Uttarakhand High Court  
*M/s Cargill India Private Limited V. State of Uttarakhand and others*
- (ii) 2017(1) FAC 243 Uttarakhand High Court at Nainital  
*M/s Glaxo Smithkline V. State of Uttarakhand and ors*
- (iii) 2016(2) FAC 533 Chhattisgarh High Court  
*Ramakant Gupta V. the State of Chhattisgarh and ors.*

In these cases, writ petitions were preferred against the interlocutory order of the Adjudicating Officer by the petitioners; but, relief was granted in exercise of extraordinary writ jurisdiction by the Hon'ble High Court of Uttarakhand and Chhattisgarh..

- (iv) 2017(1) FAC 228 Allahabad High Court  
*M/s Pepsi Co India Holdings Pvt. Ltd. V. State of U.P. and anr.*

In this case, writ petition was preferred by the petitioner against the interlocutory order which was initially filed under the head of criminal misc. petition and was numbered accordingly, but, Hon'ble Allahabad High Court directed the Registry of the court to de-register it from the criminal misc. writ petition and re-register the same as civil writ petition.

In this case also, application of the petitioner for examination of complainant's witness was rejected by Adjudicating Officer.

It was the case of the petitioner before Hon'ble Allahabad High Court that impugned order cannot be challenged under Section 70 of the Act of 2006; because, order impugned is not in the category of final decision and as such, no appeal is maintainable.

17. While reproducing Section 70 and Section 71 of the Act of 2006 in para 11 of the judgment, the Hon'ble Allahabad High Court in para 14 of the order has laid down that petitioner has got efficacious remedy under Section 70 before the Food Safety Appellate Tribunal and the order impugned can be assailed under Section 70(1) before the tribunal. Similarly against any decision or order of the tribunal, appeal would lie to the High Court under sub-section (6) of Section 71 of the Act of 2006.
18. With great respect to Hon'ble Allahabad High Court, this tribunal is in respectful disagreement with Hon'ble Allahabad High Court.
19. Under Section 71 of the Act, procedure and powers of the tribunal are defined and it is provided under section 71(6) of the Act of 2006 that any person aggrieved by any **decision or order** of the tribunal may file an appeal to the High Court. Meaning thereby, appeal is permissible against any decision or any order of the appellate tribunal before the High Court. Any order includes interlocutory order also.
20. No such corollary provision is there in Section 68 or section 70 of the Act of 2006.
21. Section 70(1) of the Act of 2006 as referred by Hon'ble Allahabad High Court, nowhere empowers the appellate tribunal to hear appeal against any order of the Adjudicating Officer. Appeal is permissible against the decision/ order passed under Section 68 of the Act of 2006 by the Adjudicating Officer which can only be final order not any interlocutory order.
22. Appeal is permitted only against final order/ decision under Section 68 of the Act which can either be dismissal of the case or imposing certain penalty or any other suitable administrative action.
23. Admittedly, no such order under Section 68 of the Act of 2006 has been passed by learned Adjudicating Officer.
24. Under Section 70 of the Act of 2006, this tribunal is not empowered to hear appeal against any order passed by the Adjudicating Officer during course of inquiry under Section 68 of the Act of 2006.

25. There is no force in the argument of Shri Ashish Tak, learned counsel for the appellants that this appeal may be treated as a petition. This argument is articulated on the basis of Rule 3.3.4 of the Rules of 2011. Learned counsel for appellants would argue that since in the title of the sub-rule, there is a reference of "appeal or application or petition", therefore, this appeal may be treated as a petition. Reference of application or petition in this sub-rule is in conjunction with the appeal. In this rule, manner of presentation of application or petition connected with the appeal is prescribed. It nowhere provides that appellate tribunal is competent to hear appeal against the interlocutory order.
26. No other argument was advanced before this tribunal except the arguments discussed hereinabove. No other authority of law was placed before this tribunal except the authorities discussed hereinabove.
27. Therefore, this appeal is not maintainable and liable to be dismissed summarily without going into the merit of the case.

**ORDER**

28. Appeal filed by the appellant against the order passed by learned Adjudicating Officer Baran dated 03.10.2017 in Case No.10/2017 is hereby dismissed.
29. Registrar to provide a certified copy of this order to the appellants without any cost.
30. Pronounced on 13.12.2017.

(Umesh Kumar Sharma)  
Presiding Officer