

**FOOD SAFETY APPELLATE TRIBUNAL  
JAIPUR, RAJASTHAN**

**APPEAL NO.FA/0025/2017**

Manish Kumar S/o Shri Ved Prakash, by caste Agarwal, resident of Akash Ganga Agency, Hanumangarh Town & Others

....Appellants

Versus

State of Rajasthan through Commissioner, Food Safety Office, Jaipur & Another

....Respondents

**APPEAL NO.FA/0017/2017**

S.M. Tripathi (Shailendra Mani Tripathi), Dy. General Manager (Production), Daurala Sugar Works, Town: Daurala Town, Tehsil-Sardhana, District-Meerut (U.P.) 250221.

....Appellant

Versus

Rewat Singh, Food Safety Officer, Office of the Chief Medical and Health Officer, Jaisalmer & Others

....Respondents

**APPEAL NO.FA/0015/2017**

Ramesh Sindhi, Rathiyon-ki-Prol, Barmer & Others

....Appellants

Versus

Bhooraram Godara, Food Safety Officer, Office of the Chief Medical and Health Officer, Barmer.

....Respondent

**APPEAL NO.FA/0060/2017**

Sunil Kumar Thatera S/o Indralal Thatera M/s Sunil Kumar Thatera, Meena ka Kua, Sardarshahar Distt. Churu & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan, Jaipur & Another

....Respondents

**APPEAL NO.FA/0059/2017**

Sunil Kumar Thatera S/o Indralal Thatera M/s Sunil Kumar Thatera, Meena ka Kua, Sardarshahar Distt. Churu & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan, Jaipur & Another

....Respondents

**APPEAL NO.FA/0061/2017**

Pawan Kumar S/o Dhanpat Ram M/s Vijay Agency, Main Bus Stand, Sadulpur Distt. Churu (Rajasthan) & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan, Jaipur & Another

....Respondents

**APPEAL NO.FA/0062/2017**

Pawan Kumar S/o Dhanpat Ram M/s Vijay Agency, Main Bus Stand,  
Sadulpur Distt. Churu (Rajasthan) & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another

....Respondents

**APPEAL NO.FA/0092/2017**

Anil Kumar S/o Shri Babulal, R/o Kalyanpura Marg No.1, Barmer  
(Rajasthan) & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another.

....Respondents

**APPEAL NO.FA/0093/2017**

Anil Kumar S/o Shri Babulal, R/o Kalyanpura Marg No.1, Barmer  
(Rajasthan) & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another.

....Respondents

**APPEAL NO.FA/0089/2017**

Bhera Ram S/o Hansa Ram Choudhary. The Salesman of M/s Sureshwari  
Agency, Khara road, Ahore, District Jalore (Raj.) & Others.

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another.

....Respondents

**APPEAL NO.FA/0090/2017**

Kailash Sharma S/o Doongarmal, owner of M/s Ramesh Cold Drinks,  
Agarwal Colony, Bus Stand Premises, Bhinmal, Jalore (Rajasthan) &  
Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another

....Respondents

**APPEAL NO.FA/0091/2017**

Anil Kumar S/o Shri Babulal, resident of Kalyanpura Marg No.1, Barmer  
(Rajasthan) & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan,  
Jaipur & Another

....Respondents

**APPEAL NO.FA/0052/2017**

Chandra Prakash Sindhi S/o Sh. Moolchand Sindhi. M/s Dilip Kumar Agency, opp. Ghandhi Bal Niketan School, Ratangarh Dist. Churu (Rajasthan)- Manager & Others

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan, Jaipur & Another

....Respondents

**APPEAL NO.FA/0112/2017**

Ramesh Singh Rawat, Quality Assurance Manager, Nominee M/s Hindustan Coca-Cola Beverages Private Ltd., Plot No.SP 39-40, RIICO Industrial Area, Kaladera, Jaipur-303801, Rajasthan & Another

.....Appellants

Versus

State of Rajasthan through the Commissioner –Food Safety, Rajasthan, Jaipur & Another

....Respondents

**APPEAL NO.FA/0064/2017**

Haider Ali M/s Shri Ram Traders, behind Railway Station, Sujangarh, district Churu (Rajasthan) & Another.

.....Appellants

Versus

State of Rajasthan through the Commissioner, Food Safety, Rajasthan, Jaipur, Swasthya Bhawan, C-Scheme, Jaipur & Another

....Respondents

Present :-

S/Shri Mayank Gupta, Ashish Tak, Deepak Bishnoi, Shivangsu\_Nawal, Archit Bohra, Nandani Singh, Advocates on behalf of appellants.  
Shri Gaurav Singh and Shri Yuvraj Samant , Advocates Amicus Curiae.  
Shri V.D. Gathala on behalf Respondents State of Rajasthan

**ORDER**

Date –01.11.2018

This order will decide the common points framed for adjudication for the reasons given in order dated 04.05.2018.

On 4.5.2018 following order was passed by this Tribunal-

“.....In these matters and in some other matters pending before this Tribunal, almost in every case, certain common objections are raised by the appellants. Though, some objections are specific to the concerned matter, but some objections are found to be similar in nature by this tribunal. Matters are being argued at different time by different learned advocates. In these circumstances, possibility of conflicting order on a common point cannot be overruled.

2. Since this tribunal was established vide notification F.34(9)M&H/Gr.-3/2012 dated 24.07.2015 and no past precedent of this tribunal is available on the common points raised by different appellants in different appeals.
3. Although, reliance is placed by learned advocates on certain orders of coordinate tribunals functional in other States on these points.
4. To avoid divergence of views upon common points raised in different appeals, it is decided that before attempting any final order/ judgment in any appeal pending before this tribunal, common point(s) of law raised in

different appeals should be decided first. Therefore, it is proposed to hear erudite submissions of learned members of the Bar on following points –

- (a) Whether procedure of Inquiry by Adjudicating Officer laid down in Rule 3.1 of Food Safety and Standard Rules 2011 envisage trial provided under Cr.P.C. 1973 ?
  - (b) If provisions of Rule 3.1 of Food Safety and Standard Rules 2011 envisage regular trial, then what will be procedure?
  - (c) Whether Adjudicating Officer is empowered to depart from the procedure laid down in Rule 3.1 ?
  - (d) Is it mandatory for Adjudicating Officer to provide opportunity of cross examination of any witness desired by the non-applicant (Contravener)?
  - (e) What is the effect of non-observance of any provision of Rule 3.1 Food Safety and Standard Rules 2011 by Adjudicating Officer?
  - (f) What is the effect of report of Expert Group submitted before Hon'ble Supreme Court of India in Writ Petition (Civil) No.681 of 2004 regarding labelling provisions of carbonated beverages as laid down in Food Safety and Standards (Packaging and Labelling) Regulations 2011?
  - (g) In matters of carbonated/ fruit/ other similar drinks, is it necessary to disclose identity of added natural, nature-identical and artificial flavouring substances?
  - (h) What is the correct import of Section 3(p), 43 & 98 of FSSA 2006?
  - (i) Is it mandatory to provide copy of the analysis report under Section 46(4) of the FSSA 2006 and Rule 2.4.6 of FSSR 2011 separately to manufacturer of the Food Product?
  - (j) Whether Food Analyst or Referral Food Laboratory can give report in different format than provided under the Food Safety and Standards (Laboratory and sample analysis) Regulations 2011?....."
5. After framing these points, Shri Gaurav Singh and Shri Yuvraj Samant, Advocates were appointed Amicus Curiae in this matter.
  6. Learned Amicus Curiae submitted a brief note upon the common points framed by this Tribunal.
  7. Arguments heard.
  8. I have gone through the submissions made by learned members of the Bar, S/Shri Mayank Gupta, Ashish Tak, Deepak Vishnoi, Shivangsu\_Nawal, Archit Bohra, Nandani Singh, Advocates appearing on behalf of contesting parties, Shri V.D.Gathala, Advocate on behalf of State of Rajasthan and Shri Gaurav Singh and Shri Yuvraj Samant, Advocates, Amicus Curiae.
  9. I have also gone through the written submissions submitted by the learned Advocates appearing on behalf of contesting parties and Amicus Curiae.
  10. Shri Gaurav Singh Advocate and Shri Yuvraj Samant, Advocate Amicus Curiae submitted brief note upon the common points framed by this Tribunal. Learned Advocates appearing on behalf of contesting parties also submitted their submission along with synopsis.
  11. I have gone through the written submissions submitted by the learned Advocates appearing on behalf of contesting parties and Amicus Curiae.
  12. Submissions and relevant provisions of law will be appreciated at proper stage of the order.

13. **POINTS FOR DETERMINATION**

- (a) Whether procedure of Inquiry by Adjudicating Officer laid down in Rule 3.1 of Food Safety and Standard Rules 2011 envisage trial provided under Cr.P.C. 1973?
- (b) If provisions of Rule 3.1 of Food Safety and Standard Rules 2011 envisage regular trial, then what will be procedure?
- (c) Whether Adjudicating Officer is empowered to depart from the procedure laid down in Rule 3.1 ?
- (d) Is it mandatory for Adjudicating Officer to provide opportunity of cross examination of any witness desired by the non-applicant (Contravener)?
- (e) What is the effect of non-observance of any provision of Rule 3.1 Food Safety and Standard Rules 2011 by Adjudicating Officer?

14. **DECISION**

- (a & b) Procedure of enquiry laid down in rule 3.1 of Food Safety and Standard Rules of 2011 (hereinafter will be referred as Rules of 2011) does not envisage trial as provided under Cr.PC 1973.
- (c) It is obligatory upon the Adjudicating Officer to strictly follow procedure as laid down in rule 3.1 of Rules of 2011.
- (d) It is not mandatory for the Adjudicating Officer to examine and provide opportunity of cross-examination of any witness to the contravener.
- (e) Minor deviation from the procedure laid down in Rule 3.1 of Rules of 2011 will not vitiate the proceeding ipso facto. A party to the proceeding has to explain that non-observation of any procedure as laid down in rule 3.1 of the Rules of 2011 has caused substantial prejudice to his right of defence, and there is failure of justice.

**REASONS FOR DECISION**

15. On these points, learned Advocates appearing for contesting parties, learned Government Advocate and learned Amicus Curiae submitted that proceedings under section 68 of the Act of 2006 are primarily civil in nature and procedure prescribed under rule 3.1 of Rules of 2011 shall apply; however, there was diversions of opinion regarding right to cross-examine and strict observance of the procedure. It is necessary to analyse the relevant provisions of law.
16. Section 68 of the Food Safety and Standards Act of 2006 (hereinafter will be referred as "the Act of 2006") provides as under-

**Section 68 of the Act of 2006 provides as under:-**

- 68.** Adjudication- (1) 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 enquiry, 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 section 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.

17. Rule 3.1.1 of Rules of 2011 provides as under:-

**3.1.1: Holding of inquiry**

1. On receipt of the copy of the report of Food Analyst in Form VII A from the Designated Officer, the person from whom the sample was taken or the persons, whose names and addresses and other particulars have been disclosed under Rule 2.5 of these rules or wholesaler or manufacturer has preferred an appeal against the findings of the report of the Food Analyst before the Designated Officer in terms of sub-section (4) of section 46 of the Act and the same has been dismissed, or the referral laboratory has, pursuant to the reference made by the Designated Officer in terms of sub-section (4) of section 46 of the Act confirmed the findings of the Food Analyst in his report, or if no appeal has been preferred, the Designated Officer shall examine the case on the basis of the sections under which the person has been charged as to whether the contravention is punishable with imprisonment or the same is punishable with fine only under the Act. However, if no contravention is established and the sample conforms to the requirement of FSS regulations, the same will be communicated to the Food Business Operator immediately.
2. If the Designated Officer decides that such contravention is not punishable with imprisonment but only with fine under the provisions of the Act, he shall cause and authorize the Food Safety Officer to file with the Adjudicating Officer an application for adjudication of the offence alleged to have been committed by the person from whom the food sample has been taken or the person whose name and address and other particulars have been disclosed under Rule 2.5 of these rules and/or the seller or manufacturer of the food item in respect of which the report has been received.
3. On receipt of the communication from the Designated Officer authorizing the filing of the adjudication application, the Food Safety Officer shall file the application for adjudication with the Adjudicating Officer for adjudication of the offence/contravention alleged to have been committed.
4. On receipt of the application for adjudication from the Food Safety Officer, the Adjudicating Officer shall commence the enquiry proceedings.
5. The Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offence punishable under sections 50, 51, 52, 53 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the At.
6. For holding an inquiry for the purpose of adjudication under section 68 of the Act as to whether any person (s) has/have committed contravention of any of the provisions of the Act referred to in Rule 3.1.1.(5) herein or the rules or regulations in respect of which the offence is alleged to have been committed, the Adjudicating Officer shall, in the first instance, issue a notice to such person or persons giving him instance, issue a notice to such person or persons giving him or them an opportunity to make a representation in the matter within such period as may be specified in the notice (not being less than 30 days from the date of service thereof).

7. Every notice under Rule 3.1.1.(6) to any such person shall indicate the nature of offence alleged to have been committed by him or them, the section(s) of the Act alleged to have been contravened, and the date of hearing of the matter. A copy of the report of the Food Analyst shall also be annexed to such notice.
8. On the date fixed for hearing, the Adjudicating Officer shall explain to the person or persons proceeded against or to his authorized representative, the offence alleged to have been committed by such person, indicating the provision of the Act, rules or regulations in respect of which the contravention is alleged to have taken place.
9. The Adjudicating Officer shall then give an opportunity to such person or persons to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date.  
Provided that the notice referred to in Rule 3.1.1 (6) may at the request of the person concerned, be waived.  
Provided further that the Adjudicating Officer shall pass the final order within 90 days from the date of first hearing mentioned in Rule 3.1.1 (8) above.
10. The State Government may appoint a presenting officer from amongst the panel of advocates of the court of local jurisdiction, in an inquiry under this rule.
11. While holding an inquiry under this rule, the Adjudicating Officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Adjudicating Officer may be useful for or relevant to, the subject matter of the enquiry.
12. If any person fails to appear or neglects or refuses to appear as required by rule 3.1.1(6&7) before the Adjudicating Officer, the Adjudicating Officer may proceed with the inquiry in the absence of such person, after recording the reasons for doing so.
18. As per rule 3.1.1.1 (5) of Rules of 2011 Adjudicating Officer is empowered to hold enquiry for the offences punishable under section 52, 58, 64 to 67 of the Act of 2006. It has been held in the judgment of Dharmendra Kumar V. State of Bihar, decided by the Patna High Court in the Criminal Writ Case No.119/2016, that the scheme of the act clearly creates a distinction between prosecution in Court and proceedings before adjudicating officer. Therefore, a distinct procedure of enquiry has been provided under rule 3.1 of the Rules of 2011.
19. It is trite law that whenever specific procedure is prescribed then any other procedure is impliedly prohibited.
20. Nature of proceeding under rule 3.1 of the Rules of 2011 are primarily civil in nature, therefore, procedure of trial as provided under Cr.P.C. does not apply to proceeding under rule 3.1 of the Rules of 2011.
21. Hon'ble Allahabad High Court in Pradeep Kumar Gupta V/s State of U.P. (Cr. Appeal No.1586 of 2015) decided on 12<sup>th</sup> May, 2015 (2016 CRLJ 122) has held as under:-  
*"....The Court is of the view that both the Adjudicating Officer and the Food Safety Appellate Tribunal, while adjudging the quantum of penalty under Chapter X of the Act of 2006 were only exercising the powers of the Civil Court as their determination was only confined to the adjudication on the quantum of penalty and nothing else. They had no jurisdiction or power or authority to impose any punishment/sentence, which power was only conferred upon the Special Courts or the Ordinary Criminal Courts as the case may be, for prosecution of an offence under the Act....."*
22. As per section 68 of the Act and rule 3.1 of the Rules of 2011, it is crystal clear that before reaching to any conclusion by the Adjudicating Officer it is necessary to hold a proper enquiry as envisaged in rule 3.1 of the Rules of 2011. This is primarily based upon the principle of natural justice. This

procedural requirement takes Adjudicating Officer to a logical conclusion about the facts placed before him for adjudication.

23. Bereft of that, it may leave to erroneous conclusion by the Adjudicating Officer.
24. Therefore, it is mandatory upon the Adjudicating Officer to strictly follow the procedure as laid down in rule 3.1 of the Rules of 2011, failing which conclusion will be based upon the subjective satisfaction of the Adjudicating Officer which is impermissible in law.
25. As discussed earlier, provisions laid down in rule 3.1 of the Rules of 2011 are primarily based upon the principle of natural justice. Therefore, it will be unwise to say that any inadvertent deviation would vitiate the entire proceeding.
26. But, it should not be construed as a liberty to Adjudicating Officer to deviate from the procedure laid down in rule 3.1 of the Rules of 2011; Although, minor deviation from the procedure will not vitiate the proceeding ipso facto. A party to the proceeding has to explain that non-observation of any procedure as laid down in rule 3.1 of the Rules of 2011 has caused substantial prejudice to his right of defence, and there is failure of justice.
27. However, it can be appreciated upon particular facts of the case.
28. It is reiterated that procedure laid down in rule 3.1 of the Rules of 2011 is mandatory in nature. Any departure from the same cannot be held to be justified in law, but to hold to quash the entire proceeding on this ground, there should be failure of justice.
29. Shri Shivangshu Naval and Shri Ashish Tak learned Advocates appearing on behalf of contesting parties would argue that any deviation from procedure should be fatal to prosecution agency. But, as discussed earlier, if principle of natural justice as provided in Rule 3.1 of the Rules 2011 has been followed in essence than there cannot be failure of justice.
30. So far as the cross-examination of witness is concerned, as discussed earlier there is no such provision in rule 3.1.1 of Rules of 2011 for recording of evidence. However, if Adjudicating Officer invokes his power under sub-rule 11 of rule 3.1.1.1 and examine any witness in that eventuality a party to the proceeding have a right to cross-examine such witness. Power under this sub-rule is discretionary which can be exercised by the Authority looking to the facts and circumstances of the case.
31. Shri Ashish Tak, learned Advocate appearing for contesting parties would argue that cross-examination is a necessary concomitant of reasonable opportunity and principle of natural justice. Reliance was placed upon Ramakant Gupta Vs. State of Chhatisgarh and others 2016 CRLJ 3386. In this case, relying upon the judgment delivered by Hon'ble Supreme Court of India in Khem Chand Vs. Union of India AIR 1958 Supreme Court 258 quashed the proceedings under the Act of 2006 on the ground that Adjudicating Officer failed to examine the witnesses and right of cross-examination was not granted to the contravener.
32. But, in a case under Electricity Act, where a penalty was imposed against the consumer without providing right of cross-examination to the consumer by Adjudicating Authority under the Electricity Act which was upheld in appeal also. Hon'ble Supreme Court of India in (2006) 3 SCC 74 Transmission Corpn. Of A.P. Ltd. And others V/s Sri Rama Krishna Rice Mill has distinguished the law laid down in Khem Chand case, it was held by the Hon'ble Supreme Court that –



".... The nature of adjudication under clause 39.9.2 of the Terms and Conditions of Supply is somewhat different from an enquiry under Article 311 (2) of the Constitution. It cannot be laid down as a rule of universal application that whenever the statement of the departmental officer is pressed into service for the purpose of adjudication, a right of cross-examination is inbuilt...."

..... In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the Appellate Authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official....."

33. Facts of these cases are akin to this case here also in these cases matter pertains to adjudication under section 68 of the Act of 2006 wherein special procedure is prescribed for holding enquiry. Therefore, principle of law laid down in Khem Raj case is not applicable in these cases. In terms of the judgment of the Hon'ble Supreme Court law laid down in Ramakant Gupta's case by Hon'ble High Court of Chhatisgarh is *per incuriam*.
34. If a party makes an application for cross-examination of witness, then he has to make out a case for the same.
35. Merely stating that the particular statement of fact will be utilised for the purpose of adjudication would not be sufficient in all cases.
36. If an application is made requesting for grant of opportunity to cross-examine any official, the same has to be considered by the Adjudicating Officer who shall have if grant be requested to pass a reasoned order; if he chooses to reject the application in that event an adjudication be concluded. It shall be open to the party affected to establish before the appellate authority as to how he has been prejudiced by refusal to grant an opportunity to cross-examine (AIR 2006 SC 1445).

37. **POINT FOR DETERMINATION**

- (f) What is the effect of report of Expert Group submitted before Hon'ble Supreme Court of India in Writ Petition (Civil) No.681 of 2004 regarding labelling provisions of carbonated beverages as laid down in Food Safety and Standards (Packaging and Labelling) Regulations 2011?

**DECISION**

There was no universal declaration in the judgment that every label is as per the Labelling Regulations 2011.

38. **REASONS FOR DECISION**

This point was framed only because in various cases, it is being argued that their package label is in consonance with the Food Safety and Standards (Food Packaging and Labelling) Regulations, 2011 and reliance is being placed on a judgment of the Hon'ble Supreme Court passed in the writ petition (Civil) No. 681 of 2004.

39. In this writ petition an expert group was constituted under section 13 of the Act of 2006 and the report submitted was in terms thereof. It is requirement of the Act of 2006 that such group or scientific panel will be constituted on regular basis. The particular reference thereof is found in the judgment of the Hon'ble Supreme Court, evaluated in general the prevalent practices in that point of time and held that the labelling

provisions are in line with the Food Safety and Standards (Food Packaging and Labelling) Regulations 2011. It was a general evaluation, there was no universal declaration in the judgment that every label is as per the Labelling Regulations 2011. In the judgement there is a reference regarding provisions of labelling, not to label of any particular case. In para 22 of the said judgment, it has been held that every endeavour has to be made to achieve an appropriate level of protection of human life and health. Therefore, it cannot be said that in this case the Hon'ble Supreme Court has approved every label of packaging available at that point of time.

40.

**POINT FOR DETERMINATION**

- (g) In matters of carbonated/ fruit/ other similar drinks, is it necessary to disclose identity of added natural, nature-identical and artificial flavouring substances?

**DECISION**

It is essential to disclose the identity of the flavour.

41.

**REASONS FOR DECISION**

As per Rule 2.2.2 (5) of the Food Safety and Standards (Food Packaging and Labelling) Regulations, 2011 (hereinafter will be referred as "the Labelling Regulations 2011). There should be declaration regarding Food Additives, addition of colours and/of Flavours, etc. Relevant rule is as under:-

42.

**The Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (hereinafter will be referred as Labelling Regulation, 2011)  
Regulation 2.2.2 (5) Declaration regarding Food additives-**

- (i) For food additives falling in the respective classes and appearing in lists of food additives permitted for use in foods generally, the following class titles shall be used together with the specific names or recognized international numerical identifications:

Acidity Regulator, Acids, Anticaking Agent, Antifoaming agent, Antioxidant, Bulking Agent, Colour, Colour Retention Agent, Emulsifier, Emulsifying Salt, Firming Agent, Flour Treatment Agent, Flavour Enhancer, Foaming Agent, Gelling Agent, Glazing Agent, Humectant, Preservative, Propellant, Raising Agent, Stabilizer, Sweetener, Thickener:

- (ii) Addition of colour and/or Flavours-

- (a) Extraneous addition of colouring matter to be mentioned on the label-Where an extraneous colouring matter has been added to any article of food, there shall be displayed one of the following statements in capital letters, just beneath the list of the ingredients on the label attached to any package of food so coloured namely:

CONTAINS PERMITTED (NATURAL COLOUR(S) OR CONTAINS PERMITTED SYNTHETIC FOOD COLOURS (S)

OR

CONTAINS PERMITTED NATURAL AND SYNTHETIC FOOD COLOUR (S)

Provided that where such a statement is displayed along with the name or INS No. of the food colour, the colour used in the product need not be mentioned in the list of ingredients.

- (b) Extraneous addition of flavouring agents to be mentioned on the label.

Where an extraneous flavouring agent has been added to any article of food, there shall be written just beneath the list of

- ingredients on the label attached to any package of food so flavoured, a statement in capital letters as below  
CONTAINS ADDED FLAVOUR (specify type of flavouring agent as per regulation 3.1.10 (1) of Food Safety and Standards (Food Product Standards and Food Additive) Regulations, 2011).
- (c) In case both colour and flavour are used in the product, one of the following combined statements in capital letters shall be displayed, just beneath the list of ingredients on the label attached to any package of food so coloured and flavoured, namely:-

CONTAINS PERMITTED NATURAL COLOUR (S) AND ADDED FLAVOUR (S)

OR

CONTAINS PERMITTED SYNTHETIC FOOD COLOUR(S) AND ADDED FLAVOUR (S)

OR

CONTAINS PERMITTED NATURAL AND SYNTHETIC FOOD COLOUR (S) AND ADDED FLAVOUR (S)

Provided that in case of artificial flavouring substances, the label shall declare the common name of the flavours, but in case of the natural flavouring substances or nature identical flavouring substances, the class name of flavours shall be mentioned on the label and it shall comply with the requirement of label declaration as specified under the regulation 2.2.2(5) (ii).

Note- When statement regarding addition of colours and/or flavours is displayed on the label in accordance with regulation 2.2.2 (5) (ii) and regulation 3.2.1 of Food Safety and Standards (Food Product Standards and Food Additive) Regulations, 2011, addition of such colours and/or flavours need not be mentioned in the list of ingredients. Also, in addition to above statement, the common name or class name of the flavour shall also be mentioned on label:

Provided further that when combined declaration of colours and flavours are given, the international Numerical Identification number of colours used shall also be indicated either under the list of ingredients or along with the declaration:

Provided also further that every package of synthetic food colours preparation and mixture shall bear a label upon which is printed a declaration giving the percentage of total dye content.

43. Clause B of Regulation 2.2.2 (5) of Labelling Regulation, 2011 provides that the label should specify the type of Flavouring Agent as per the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, wherein three types have been provided viz; Natural, Nature Identical and Artificial. In case of Artificial Flavouring Substance, the Label shall declare the common name of the flavour used, whereas in case of natural and nature identical, the class name has to be mentioned. This provision cast a duty upon the manufacturer to mention specifically which category of labelling substance does the product contain, failure to do so will invite action under the Labelling Regulations, 2011.

44. **Regulation 2.4.6.3 (3) & (4) of the Labelling Regulation, 2011 states as under:-**

- (3) Any food product which does not contain the specified amount of fruit and is likely to deceive or mislead or give a false impression to the consumer that the product contains fruit, whether by use of words or pictorial representation, shall be clearly and conspicuously marked on the label as 'ADDED (NAME OF FRUIT) FLAVOUR'.
- (4) Any food product which contains only fruit flavours, whether natural flavours and natural flavouring substances or nature identical flavouring substances, artificial flavouring substances as single or in combination thereof, shall not be described as a fruit product and the

word (NAME OF THE FRUIT) FLAVOURED shall be used in describing such a product.

45. Carbonated/Fruit, Beverages or Drink means any beverage or drink which is purported to be prepared from fruit juice and water or carbonated water and containing sugar, dextrose, invert sugar or liquid glucose either singly or in combination. It may contain peel oil and fruit essence. It may also contain any other ingredients appropriate to the product.
46. The function of natural flavour or natural-identical and artificial substance in food is flavouring rather than nutritional. Natural flavours include the natural essence or extractives obtained from plants. As per Regulation 2.4.6 of Food Safety and Standards (Packaging and Labelling) Regulations, 2011, it is essential to disclose the added natural, natural-identical and artificial flavouring substance with the word "Added" and the flavour used in the carbonated fruit and other similar drinks. Therefore, it is essential to disclose the identity of the flavour for example; banana or apple or pomegranate or guava etc. etc.

47. **POINT FOR DETERMINATION**

- (h) What is the correct import of Section 3(p), 43 & 98 of FSSA 2006?

**DECISION**

If the sample is tested in a laboratory which does not fall within the definition of section 3 (p) and not recognized by the Food Authority, the analysis made in such laboratory cannot be relied upon.

48. **REASONS FOR DECISION**

**THE FOOD SAFETY AND STANDARDS ACT 2006 Section 3.1 (p)**

"food laboratory" means any food laboratory or institute established by the Central or a State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognised by the Food Authority under section 43;

49. **Section 43 of Food Safety and Standards Act 2006. Recognition and accreditation of laboratories, research institutions and referral food laboratory.**

- (1) The Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysis under this Act.
- (2) The Food Authority shall, establish or recognise by notification, one or more referral food laboratory or laboratories to carry out the functions entrusted to the referral food laboratory by this Act or any rules and regulations made thereunder.
- (3) The Food Authority may frame regulations specifying-
  - (a) The functions of food laboratory and referral food laboratory and the local area or areas within which such functions may be carried out.
  - (b) The procedure for submission to the said laboratory of samples of articles of food for analysis or tests, the forms of the laboratory's reports thereon and the fees payable in respect of such reports; and
  - (c) Such other matters as may be necessary or expedient to enable the said laboratory to carry out its functions effectively.

50. The Hon'ble Bombay High Court vide its judgment in Nestle India Limited Vs. The Food Safety and Standards Authority of India and Ors., 2015 (6)

ABR 74 has dealt with the issue of laboratories Relevant part of the judgment is extracted below:

*"There is no manner of doubt that this Court is not expected to see the correctness or otherwise of the reports given by the experts and, therefore, there cannot be any dispute regarding ratio of the judgments on which reliance has been placed by the learned Senior Counsel for Respondent Nos.3 and 4 and the learned Additional Solicitor General for Respondent No.1. This Court, however, can see whether the samples have been properly analysed in terms of the mandatory provisions of the Act or not and, secondly, whether any reliance can be placed either on reports obtained by the Respondents or even for that matter on the reports obtained by the Petitioner."*

*"Upon conjoint reading of both these sections quoted hereinabove, it is clear that under section 3(p), "food laboratory" is a laboratory which is either State or Central laboratory or any other allied laboratory which is accredited and recognized by NABL and by the Food Authority under section 43 of the Act. The laboratory, therefore, has to pass twin test before it can be said to be a recognized laboratory viz (i) it has to be accredited by the Food Authority under section 43 of the Act, Sub-section (1) of section 43 makes it abundantly clear that only in that laboratory which is recognized by the Food Authority by Notification, food can be sent for analysis by the Food Analyst. Section 43 (1) mandates that the Food Analyst has to analyse the food in a laboratory accredited by NABL and also recognized by the Food Authority and notified by it.*

*Therefore, if there is non-compliance of the said provisions and if the food is tested in a laboratory which does not fall within the definition of section 3 (p) and not recognized by the Food Authority, the analysis made in such laboratory cannot be relied upon. The Apex Court in Pepsico India Holdings Private Limited Vs. Food Inspector and Another, (2011) 1 SCC 176 has observed that the provisions are mandatory.*

51. Further, the Hon'ble Supreme Court in para 56.4 of Swami Achyutanand Tirth and Ors. Vs. Union of India (UOI) and Ors., (2016) 9 SCC 699 has held as follows:
52. State Food Safety Authorities should also ensure that there is adequate lab testing infrastructure and ensure that all labs have/obtain NABL accreditation to facilitate precise testing; State Government to ensure that State food testing laboratories/district food laboratories are well-equipped with the technical persons and testing facilities.
53. Shri V.D.Gathala, learned Counsel for State has placed reliance upon Section 98 of the Act of 2006 which provides, as under:-  
**Section 98 Transitory provisions for food standards.**  
Notwithstanding the repeal of the enactment and Orders specified in the Second Schedule, the standards, safety requirements and other provisions of the Act and the rules and regulations made thereunder and Orders listed in that Schedule shall continue to be in force and cooperate till new standards are specified under this Act or rules and regulations made thereunder:  
Provided that anything done or any action taken under the enactment and orders under repeal shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken under this Act.
54. Reliance was also placed upon the notification issued on 5.7.2011. Relevant notification is as under:-

*"No.83-Dir (Enf.)/FSSAI/2011  
Food Safety & Standards Authority of India (A Statutory Regulatory Body of Govt. of India)  
Ministry of  
Health & Family Welfare  
3<sup>rd</sup> Floor, FDA Bhawan, Kotla Road.*

To,  
Food Safety Commissioner of all States/UTs,  
New Delhi-110002.

Subject: Clarification on the status of Public Labs functioning at Centre/State/UT after the promulgation of FSS Act, 2006 with effect from 5<sup>th</sup> August, 2011.

*Section 43 of the FSS Act requires that all food testing under the Act will be done in NABL or any other FSSAI approved accredited lab. State Governments and UT Government have already been advised in this regard and the result of a 'gap analysis' commissioned by FSSAI in respect of the State Labs have been shared for appropriate action for the upgradation of the Labs to accredited standards. However, from the interaction with the State Government it is clear that the process is likely to take some time and the labs will not be able to get accreditation before 5<sup>th</sup> August, 2011 when the FSS Act will become operational.*

*The matter has been examined and it is clarified that the existing Public Food Testing Laboratories which are testing food samples under PFA will continue to perform their functions of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006. The Central Food Laboratories at Kolkata, Pune and Mysore and RFSL, Ghaziabad will function as the referral laboratories.*

*Yours sincerely, (SS. Ghonkrokta)  
Director"*

55. This notification clearly mentions that, it will be effective till the laboratories were accredited by NABL and recognized under the Act of 2006. It is an admitted position that in 2012 sufficient laboratories have been so recognized by the Food Authority and notified by issuing notifications. Therefore, the said notification becomes redundant.

56. **POINT FOR DETERMINATION**

- (i) Is it mandatory to provide copy of the analysis report under Section 46(4) of the FSSA 2006 and Rule 2.4.6 of FSSR 2011 separately to manufacturer of the Food Product?

**DECISION**

It is not mandatory to provide copy of the analysis report under Section 46(4) of the FSSA 2006 and Rule 2.4.6 of FSSR 2011 separately to manufacturer of the Food Product.

57. **REASONS FOR DECISION**

**Section 46. Functions of Food Analyst.**

- (1) .....  
(2) .....  
(3) .....  
(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.

58. To examine this point, it is necessary to analyse the Rule 2.4.2 (6) of Rules of 2011.

**Rule 2.4.2 Analysis of food samples by Food Analyst**

1. ....  
2. ....  
3. ....  
4. ....  
5. ....  
6. The Designated Officer shall keep two copies of analysis report for further action, one copy shall be sent to Food Safety Officer for record and **one copy to Food Business Operator from whom the sample was taken:**  
Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.  
7. ....

59. From the analysis of the aforesaid provisions, it is crystal clear that there is no such statutory requirement of providing copy of report to the manufacturer separately. Copy is to be provided to food business operator from whom the sample was taken.

60. Shri Shingshu Nawal and Shri Deepak Bishnoi learned Advocates appearing for the parties would argue that this Tribunal should read down the provision and expand its meaning to the manufacturer also. Expanding the application of this rule by reading down the provision will amount to legislation and this tribunal do not have competence to do so.
61. More so, if at the time of taking sample name and address of the manufacturer is disclosed then a notice is also served upon such manufacturer disclosed by the Food Business Operator. Such manufacturer have due notice that sample of the product manufactured by him is under scrutiny and such manufacturer can also track the result of such analysis, therefore, it cannot be said that manufacturer is taken by surprise or he was not having any knowledge of the fact that sample of the product manufactured by him is under scrutiny.

62. **POINT FOR DETERMINATION**

- (j) Whether Food Analyst or Referral Food Laboratory can give report in different format than provided under the Food Safety and Standards (Laboratory and sample analysis) Regulations 2011?

**DECISION**

Yes, provided all the information which is necessary to be disclosed in the report has been furnished.

63. **REASONS FOR DECISION**

There is a format prescribed under the Food Safety and Standard (Laboratory and Sample Analysis) Regulation, 2011. Regulation (2) of 2.3.1 of Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011 provides as under:-

".....After test or analysis. The certificate thereof duly signed by the Director of the Referral Food Laboratory or the report signed by the Food Analyst shall be supplied forthwith to the sender in Form A or Form B as the case may be....."

64. For report of referral food laboratory form-A is prescribed and for report of the Food Analyst Form B is prescribed. These formats are for convenience; however, it is necessary to furnish the detail in the format. Therefore, if a report is prepared in any other format but the necessary details as required by respective form (A or B), then such report cannot be discarded merely on the ground that it is not in the prescribed form ( A or B).

### SUMMARY

S.N.	Point For Determination	Decision
A	Whether procedure of Inquiry by Adjudicating Officer laid down in Rule 3.1 of Food Safety and Standard Rules 2011 envisage trial provided under Cr.P.C. 1973 ?	Procedure of enquiry laid down in rule 3.1 of Rules of 2011 does not envisage trial as provided under Cr.PC 1973.
B	If provisions of Rule 3.1 of Food Safety and Standard Rules 2011 envisage regular trial, then what will be procedure?	It is Obligatory upon the Adjudicating Officer to strictly follow procedure as laid down in rule 3.1 of Rules of 2011
C	Whether Adjudicating Officer is empowered to depart from the procedure laid down in Rule 3.1 ?	
D	Is it mandatory for Adjudicating Officer to provide opportunity of cross examination of any witness desired by the non-applicant (Contravener)?	It is not mandatory for the Adjudicating Officer to examine and provide opportunity of cross-examination of any witness to the contravener.
E	What is the effect of non-observance of any provision of Rule 3.1 Food Safety and Standard Rules 2011 by Adjudicating Officer?	Minor deviation from the procedure laid down in Rule 3.1 of Rules of 2011 will not vitiate the proceeding ipso facto. A party to the proceeding has to explain that non-observation of any procedure as laid down in rule 3.1 of the Rules of 2011 has caused substantial prejudice to his right of defence, and there is failure of justice.
F	What is the effect of report of Expert Group submitted before Hon'ble Supreme Court of India in Writ Petition (Civil) No.681 of 2004 regarding labelling provisions of carbonated beverages as laid down in Food Safety and Standards (Packaging and Labelling) Regulations 2011?	There was no universal declaration in the judgment of the Hon'ble Supreme Court in writ petition (Civil) No.681 of 2004 that every label is as per the Labelling Regulations 2011.
G	In matters of carbonated/ fruit/ other similar drinks, is it necessary to disclose identity of added natural, nature-identical and artificial flavouring substances?	It is essential to disclose the identity of the flavour on the label of Carbonated / fruit / other similar drinks.



H	What is the correct import of Section 3(p), 43 & 98 of FSSA 2006?	If the sample of food is tested in a laboratory which does not fall within the definition of section 3 (p) and not recognized by the Food Authority, the analysis made in such laboratory cannot be relied upon.
I	Is it mandatory to provide copy of the analysis report under Section 46(4) of the FSSA 2006 and Rule 2.4.6 of FSSR 2011 separately to manufacturer of the Food Product?	It is not mandatory to provide copy of the analysis report under Section 46(4) of the FSSA 2006 and Rule 2.4.6 of FSSR 2011 separately to manufacturer of the Food Product.
J	Whether Food Analyst or Referral Food Laboratory can give report in different format than provided under the Food Safety and Standards (Laboratory and sample analysis) Regulations 2011?....."	Food Analyst or Referral Food Laboratory can give report in different format than provided under the Food Safety and Standards (Laboratory and sample analysis) Regulations 2011, provided all the information which is necessary to be disclosed in the report has been furnished.

65. Certain judgments of Adjudicating Officers and Appellate Authorities under the Act of 2006 of different states were also produced by Shri Ashish Tak learned Advocate for the contesting parties, but no reliance can be placed on these judgments.
66. This Tribunal appreciates the able assistance rendered by learned Amicus Curiae Shri Gaurav Singh and Shri Yuvraj Samant, Advocates.
67. Order accordingly. Registrar is directed to list the cases for final adjudication separately.

(Umesh Kumar Sharma)  
 Presiding Officer