

न्यायालय न्याय निर्णयन अधिकारी एवं अतिरिक्त जिला मजिस्ट्रेट, चित्तौड़गढ़

पीठासीन अधिकारी- रतन कुमार (आर.ए.एस.)

प्रकरण संख्या 024/2012 (GCMS 2012/00042)	दायर दिनांक 23.10.2012	निर्णय दिनांक 24.03.2021
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अनवान

सरकार जरिये खाद्य सुरक्षा एवं मानक अधिकारी, चित्तौड़गढ़ जिला
चित्तौड़गढ़ (राज.)

प्रार्थी**बनाम**

1. किशनलाल तेली पुत्र मोडीराम तेली
मैसर्स सांवरिया आइस कैंडी,
सांवरियाजी (मण्डफिया) जिला चित्तौड़गढ़
निवासी गोमाना दरवाजा छोटीसादडी जिला प्रतापगढ़।
(कार्यवाही ड्रॉप दिनांक 21.03.2013)
2. दीपक कुमार पुत्र हिम्मत लाल मुणेत
मैसर्स मुणेत ब्रदर्स, चित्तौड़गढ़ रोड,
आवरीमाता जिला चित्तौड़गढ़।
3. नीलकंठ पुत्र नाथुलाल
मैसर्स हिन्दुस्तान कोकाकोला बेवरेज प्राइवेट लिमिटेड
तुषार कोल्ड ड्रिंक्स 1552/1 चिकलवास, बडगांव उदयपुर।

अप्रार्थीगण

**--: जुर्म अन्तर्गत धारा 26 की उप धारा 2(ii) एफएसएस एक्ट
2006 नियम 2011 ::-**

--: निर्णय ::-

प्रकरण का संक्षिप्त विवरण इस प्रकार है कि आवेदक खाद्य सुरक्षा अधिकारी राजेश कुमार रामचन्दानी ने परिवाद अन्तर्गत धारा 26 की उप धारा 2(ii) के तहत विरुद्ध अप्रार्थीगण के प्रस्तुत कर निवेदन किया कि आवेदक खाद्य सुरक्षा अधिकारी दिनांक 05.06.2012 को कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी चित्तौड़गढ़ खाद्य सुरक्षा अधिकारी का कार्य संपादन कर रहे थे, और इन्हें राज्य सरकार द्वारा राजपत्र में प्रकाशित अधिसूचना क्रमांक FH/PFA/Notification/2011/440 Dated 25-07-2011 के अनुसार खाद्य सुरक्षा अधिकारी पद पर नियुक्त किया गया है। आयुक्त खाद्य सुरक्षा एवं निदेशक (जन. स्वा.) चिकित्सा एवं स्वास्थ्य सेवाएं राजस्थान, जयपुर के



आदेश दिनांक 18.08.2011 के अनुसार इनका कार्य क्षेत्र जिला चित्तौड़गढ़ आवंटित किया गया था और जिला चित्तौड़गढ़ के अंतर्गत आने वाले समस्त स्थानीय क्षेत्र इनके कार्य क्षेत्र में आते हैं। अधिसूचना एवं आदेश की फोटो प्रतियाँ न्याय निर्णयन आवेदन के साथ संलग्न हैं। आवेदक खाद्य सुरक्षा अधिकारी दिनांक 05.06.2012 को समय 10.10 ए.एम पर सांवरियाजी मंदिर के पास मैसर्स सांवरिया आइस केण्डी पर पहुँचे। वहा पर किशनलाल तेली पुत्र मोडीराम तेली विक्रेता की हैसियत से खाद्य पदार्थ मेंगो ड्रिंक (माजा) आम जनता को विक्रय कर रहे थे। आवेदक खाद्य सुरक्षा अधिकारी ने अपना परिचय पत्र दिखाकर परिचय दिया एवं विक्रेता से परिचय लिया तत्पश्चात् विक्रेता की उपस्थिति खाद्य पदार्थ मेंगो ड्रिंक (माजा) 1.2 लीटर बोतल का निरीक्षण कर मिलावट की शंका होने पर खाद्य पदार्थ मेंगो ड्रिंक (माजा) जो कि 10 बोतलों में रखी हुई थी का नमूना लेने हेतु मालिक को अवगत कराया गया तत्पश्चात नमूना वास्ते जांच हेतु लेने की सूचना फार्म V A की प्रति स्वतंत्र गवाह की उपस्थिति में तैयार कर विक्रेता को देकर प्राप्ति रसीद ली, जो की न्याय निर्णयन आवेदन के साथ संलग्न है। आवेदक खाद्य सुरक्षा अधिकारी द्वारा खाद्य पदार्थ मेंगो ड्रिंक (माजा) की 1.2 लीटर की 4 बोतले वास्ते नमूना जाँच हेतु खरीदा जिसकी कीमत विक्रेता किशन लाल तेली को रुपये 200/- नगद देकर रसीद प्राप्त की जिस पर मालिक के हस्ताक्षर हैं तथा उपस्थिति गवाहन नरेश कुमार चेंजारा व मिटुलाल प्रजापत के हस्ताक्षर करवाये एवं तस्दीक कर स्वयं आवेदक खाद्य सुरक्षा अधिकारी ने हस्ताक्षर किये। जो न्याय निर्णयन आवेदन के साथ संलग्न है। आवेदक खाद्य सुरक्षा अधिकारी ने खरीदशुदा मेंगो ड्रिंक (माजा) की चार बोतलो हेतु लेबल तैयार कर प्रत्येक बोतल पर चिपकाये और लेबलों पर डी.ओ. के कोड एवं क्रमांक एएम 206 दर्ज किया प्रत्येक लेबल पर स्वयं ने हस्ताक्षर किये एवं मालिक तथा गवाहन के हस्ताक्षर करार्ये। चारों नमूना भागों को अलग-2 कागज में लपेट कर प्रत्येक भाग पर डी.ओ. चित्तौड़गढ़ की हस्ताक्षरशुदा पेपर स्लिप नं. एएम-206 नियमानुसार चारों नमूना बोतलों पर नीचे से उपर तक गोलाई में गोंद से चिपकाकर प्रत्येक भाग को धागे से बांध कर नियमानुसार सील चपडी किया। प्रत्येक नमूना भाग पर मालिक के हस्ताक्षर नियमानुसार इस प्रकार करवाये कि पेपर स्लिप व रेपर दोनों पर आवें एवं सीलबन्द नमुनों पर गवाह के हस्ताक्षर कराकर नमुने का पुर्ण विवरण लिखकर आवेदक खाद्य सुरक्षा अधिकारी द्वारा हस्ताक्षर कर चारों नमूना लेकर चारों नमूना भागों को अपने जाप्टें में लिया। आवेदक खाद्य सुरक्षा अधिकारी ने मौके पर फर्द रिपोर्ट तैयार कर मालिक एवं गवाहान को पढ़कर, सुनाकर एवं समझाकर हस्ताक्षर करने को कहा जिसे विक्रेता किशनलाल तेली ने भी पढ़कर, समझकर व सही मानकर हस्ताक्षर किये। फर्द रिपोर्ट न्याय निर्णयन आवेदन के साथ संलग्न है। आवेदक खाद्य सुरक्षा अधिकारी ने कार्यालय पहुँच कर फार्म नं. 6 की प्रतियाँ तैयार की और प्रत्येक पर



वह नमूना सील लगाई जिससे नमूना सील किया। एक नमूना भाग मय फार्म सं. 6 की प्रति के आउटर कवर में सीलबन्द कर सील मोहर कर एवं एक प्रति फार्म नं. 6 की अलग से सील लिफाफे में पत्रवाहक द्वारा खाद्य विश्लेषक, उदयपुर को जमा करवाकर अलग-अलग रसीद प्राप्त की गई जो न्याय निर्णयन आवेदन के साथ संलग्न है। दो सील बन्द नमूना भाग मय फार्म सं. 6 की दो प्रतियों के आउटर कवर में सील बन्द कर तथा नमूने का चौथा भाग डी.ओ. मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ को जमा कराकर रसीद प्राप्त की जो न्याय निर्णयन आवेदन के साथ संलग्न है। आवेदक खाद्य सुरक्षा अधिकारी को डी.ओ. एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के पत्र क्रमांक एफएसएसए/1223944 दिनांक 03.07.2012 के द्वारा ज्ञात हुआ कि खाद्य विश्लेषक उदयपुर से प्राप्त जांच रिपोर्ट सं. एलएस 569/2012/579 दिनांक 13.06.2012 के अनुसार विक्रेता द्वारा वास्ते नमूना जाँच विक्रय किया गया खाद्य पदार्थ मेंगो ड्रिंक (माजा) मिसब्रान्ड होना पाया गया। जाँच रिपोर्ट न्याय निर्णयन आवेदन के साथ संलग्न है। आवेदक खाद्य सुरक्षा अधिकारी द्वारा प्रकरण की जांच हेतु किशनलाल तेली को पत्र द्वारा निर्देश दिये गये कि आप द्वारा उक्त खाद्य पदार्थ मेंगो ड्रिंक (माजा) किस फर्म से क्रय किया गया था। इनके द्वारा प्रत्युत्तर में मैसर्स मुणेत ब्रदर्स आवरीमाता का क्रय बिल पेश किया गया, जिस आधार पर मैसर्स मुणेत ब्रदर्स आवरीमाता को निर्देश दिये गये कि आप द्वारा उक्त खाद्य पदार्थ मेंगो ड्रिंक (माजा) किस फर्म से क्रय किया गया था, इनके द्वारा प्रत्युत्तर में मैसर्स हिन्दुस्तान कोकाकोला बेवरेज प्राइवेट लिमिटेड तुषार कोल्ड ड्रिंक्स 1552/1 चिकलवास बडगांव उदयपुर का क्रय बिल पेश किया गया। हिन्दुस्तान कोकाकोला बेवरेज प्राइवेट लिमिटेड तुषार कोल्ड ड्रिंक्स 1552/1 चिकलवास बडगांव उदयपुर को निर्देश दिये गये कि आप द्वारा उक्त खाद्य पदार्थ मेंगो ड्रिंक (माजा) किस फर्म से क्रय किया गया था। इनके द्वारा प्रत्युत्तर में अपनी फर्म का केवल खाद्य अनुज्ञा पत्र पेश किया गया, इन्हें पुनः निर्देश दिये गये कि आप द्वारा उक्त खाद्य पदार्थ मेंगो ड्रिंक (माजा) किस फर्म से क्रय किया गया था। इनके द्वारा कोई प्रत्युत्तर पेश नहीं किया गया। आवेदक खाद्य सुरक्षा अधिकारी द्वारा प्रकरण के समस्त दस्तावेज पत्रांक दि. 03.07.2012 की पालना में अभिहित अधिकारी एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी चित्तौड़गढ़ को जमा कराये गये जिस पर कार्यालय के पत्र क्रमांक एफएसएसए/12/5495 दिनांक 09.10.2012 के द्वारा आवेदक खाद्य सुरक्षा अधिकारी को उक्त केस में न्याय निर्णयन आवेदन फाईल करने हेतु प्राधिकृत किया है, जो न्याय निर्णयन आवेदन के साथ संलग्न हैं। उक्त प्रकरण में मिसब्रान्ड खाद्य पदार्थ मेंगो ड्रिंक (माजा) का विक्रय करके खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा 2 (II) का उल्लंघन किया है जिसका जुर्माना खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा



52 में निर्धारित है। अन्त में आवेदक खाद्य सुरक्षा अधिकारी द्वारा प्रार्थना की गई कि उपरोक्त आवेदन न्याय निर्णयन श्रीमान को प्रस्तुत कर दिया गया है जिसे स्वीकार निवेदन है कि उक्त अभियुक्तगणों पर अधिकतम जुर्माना लगाया जाए ताकि आम जनता को सुरक्षित खाद्य उपलब्ध कराया जा सके।

इस पर प्रार्थी खाद्य सुरक्षा अधिकारी, कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ द्वारा प्रस्तुत परिवाद को दर्ज रजिस्टर किया जाकर अप्रार्थी को जरिये नोटिस के तलब किया गया। इस पर दिनांक 10.12.2012 को अप्रार्थी संख्या 1, 2 की और से उनके अधिवक्ता हाजिर आये अधिकार पत्र पेश किया जो शामिल पत्रावली है। दिनांक 17.12.2012 को अप्रार्थी संख्या 3 की और से उनके अधिवक्ता हाजिर आये अधिकार पत्र पेश किया जो शामिल पत्रावली है। दिनांक 08.02.2013 को अधिवक्ता अप्रार्थी संख्या 3 ने अप्रार्थी संख्या 1 किशनलाल पिता मोडीराम तेली के फौत होने की सूचना दी। इस पर पत्रांक/खा0सु0मा0/24/2012/107 दिनांक 04.03.2013 से तहसीलदार, छोटीसादडी जिला प्रतापगढ़ से अप्रार्थी संख्या 1 के फौत होने के संबंध में रिपोर्ट चाही गई। इस पर तहसीलदार छोटीसादडी जिला प्रतापगढ़ द्वारा पत्रांक/राजस्व/2013/1482 दिनांक 0.03.2013 से प्रकरण में रिपोर्ट प्रेषित की गई जो कि शामिल पत्रावली होकर रिकार्ड पर है। इस पर दिनांक 21.03.2013 को अप्रार्थी संख्या 1 के फौत हो जाने से इनके विरुद्ध कार्यवाही ड्रॉप की गई। दिनांक 17.05.2013 को अप्रार्थी संख्या 2 एवं 3 की और से जवाब परिवाद पेश किये गये जो कि शामिल पत्रावली होकर रिकार्ड पर है। अपने जवाब परिवाद में अप्रार्थी संख्या 2 ने परिवाद में वर्णित तथ्यों को अस्वीकार किया एवं बताया कि That the respondents are being prosecuted for alleged violation of Section 26 (2) (ii) of the Food Safety and Standard Act, 2006 and the Rules framed thereunder and punishable u/s - 52 of the FSSA. The applicant's case as alleged in the application is that the Food Safety Officer, Sri. Rajesh Kumar Ramchandani visited the premises of M/s Sawariya Ice Candy on 05.06.2012 and on the basis of doubt of adulteration, took the sample of "Maaza" 1.2 litre for analysis and accordingly issued Form VA to the vendor. Thereafter the sample was send to the Food Analyst, Udaipur for analysis. The Food Analyst, Udaipur in its report dated 13.06.2012 opined that the sample was Misbranded under section 3 (1)(zf)(C)(i) of the FSSA. The Food Analyst opined that the label printed on the wrapper violates the law in the following manner:

A statement is printed regarding addition of colour and flavor – Contains permitted synthetic food colour (110) and added flavours (Natural, Nature - Identical and Artificial Flavouring Substances) but the common name of flavor has not been given as required by provision to regulation no. 2.2.5 (ii) (c) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011

It is further alleged that thereafter the applicant directed the vendor to provide the details from where the sample was purchased and in pursuant thereto the vendor stated that the sample was purchased from M/s Munat Brothers (Respondent herein) and thereafter M/s



Munat Brothers was directed to furnish the details from where it had purchased the sample wherein M/S Munat Brothers stated that the sample was purchased from M/S Hindustan Coca-Cola Beverages Private Limited, Tushar Cold Drinks. Thereafter Tushar Cold Drinks was directed to furnish the details of the seller and in pursuant thereto Tushar Cold Drinks had only furnished the copy of the license then again Tushar Cold Drinks was directed to furnish the details from where it had purchased the sample but no reply was filed by Tushar Cold Drinks. Thereafter it is alleged that the applicant vide letter dated 03.07.2012 submitted the documents pertaining to this case with the Designated Officer cum Chief Medical Officer and in pursuant thereto post authorization the present application is being filed. Lastly it was alleged that in the present case by selling misbranded product, Section 26 (2) (ii) of the FSSA and FSSR has been violated and the same is punishable under Section 52 of the FSSA. That it is pertinent to mention herein that at the relevant point of time the Respondent No. 2 was working as the distributor of Hindustan Coca-Cola Beverages Private Limited (HCCBPL). That it is further pertinent to mention herein that admittedly the first notice pertaining to the instant sampling was send to the Respondent No.2 vide letter dated 10.07.2012 where in the Respondent No.2 was directed to furnish certain details. That the Respondent No.2 submits that the Respondent No.2 was not given the opportunity to file appeal against the report of Food Analyst as guaranteed under Section 46 (4) of FSSA and Rule 2.4.6 of the FSSR. Section 46 (4) and Rule 2.4.6 of the FSSR is reproduced below for ready reference:

Section 46 (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.

Rule 2.4.6: Appeal to the Designated Officer:

1. When an appeal as provided under sub section 4 of section 46 is preferred to the Designated Officer by the Food Business Operator against the report of the Food Analyst, the Designated Officer, if so decides, within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity of being heard shall forward one part of the sample to the referral lab Such appeal shall be in Form - VIII which shall be filed within 30 days from the date of the receipt of copy of the analysis report from the Designated Officer. Report of the referral laboratory shall be final in this regard.

That for ready reference "food business" and "food business operator" as defined under FSSA is reproduced below:

Section 3(n) "Food business"

"food business" means any undertaking whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, sale of food ingredients.

Section 3(o) "food business operator"

'food business operator' in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;



That the Respondent No.2 states and submits that the Respondent No.2 being the Food Business Operator as defined under Section 3(o) of the FSSA had the statutory right granted under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR to get the 2nd part of the sample analyzed by the referral laboratory (whose report is final and supersedes the report of the Food Analyst) which has been denied in the instant case and in view thereof the instant application for adjudication is liable to be dismissed by this Hon'ble Court. That without prejudice to the above, the Respondent No. 2 states that Regulation 2.2.2 (5) (ii) of the Packaging and Labelling Regulations prescribes the manner of declarations regarding the addition of colours and / or Flavours to be displayed on the label. It is submitted that Regulation 2.2.2 (5) (1) (b) of the Packaging and Labelling Regulations lays down the manner of declaration to be made on labels in case of extraneous addition of flavouring agents. The relevant portion of the said Regulation is reproduced herein below for your reference:

2.2.2 (5) (ii) (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) Regulation, 2011."

Regulation 3.1.10 (1) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 defines Flavoring Agents and its types e.g.

1. Natural Flavours and Natural Flavouring Substances.
2. Nature - Identical Flavouring Substances and ill) Artificial Flavoring Substances.

That the Respondent No.2 states and submits that there is no requirement in the aforesaid Regulation to state the common name of the artificial flavouring agent and further "common name" of Artificial Flavouring Substances has not been prescribed under the FSSA, FSSR and the regulations made thereunder. The label in question accordingly contains the prescribed declaration relating to flavouring agents which is, "CONTAINS ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES)"

In view of the above, it is clear that all declarations have been made in accordance with the Food Safety & Standards (Packaging & Labelling) Regulations 2011, particularly Regulation 2.2.2 (5) (ii) (b) which is in relation to flavouring substances and therefore, there can be no case of misbranding on this account and hence the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court. That Respondent No.2 states that the Food Analyst Report, clearly states that the sample size sent to the Food Analyst was 1.2 litres, which is in contravention of the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011. Regulation 2.3.1 of the Laboratory and Sample Regulations mandates that in case of Fruit Juice / Fruit Drink / Fruit Squash, a sample size of 1 litres is to be sent to the Food Analyst for the purpose of analysis. The said Regulation is reproduced below for your kind reference:

"Procedure of Sampling.--

2.3.1: Quantity of sample to be sent to the Food Analyst:- (1) The quantity of sample of food to be sent to the Food Analyst /Director for analysis shall be as specified in the table below.

That the Respondent No.2 submits that admittedly the Respondent No.2 is not the



manufacturer of the sample and the Respondent No.2 cannot be held liable for misbranding of the sample. The Respondent No.2 states and submits that the FSO who had occasion to deal with the sample did not mention anything about misbranding of label or contravention of the regulations. The instant adjudication application has only relied on the Food Analyst report for misbranding of the label. The misbranding of label does not require Food Analyst opinion and the FSO who has drawn the samples had not mentioned anything about the label of the sample, on the contrary the FSO had picked the samples on the basis of the doubt of adulteration of the sample. In view thereof the Respondent No.2 is not liable to be prosecuted as the FSO who had the occasion to see the label declaration of the sample did not mention anything about the misbranding and it does not require the opinion of the Food Analyst. That being aggrieved by the above Application filed in this Hon'ble Court and the entire proceeding initiated by the applicant, the Respondent No.2 is seeking for dismissal of the application on the following amongst other grounds which are set out herein below which are without prejudice to each another:

GROUNDS

- a. For that that the Application filed is ex-facie illegal and hence it is liable to be dismissed in order to secure the ends of justice.
- b. For that the application and the documents appended thereto taken on face value do not make out any prima facie case against the respondent.
- c. For that the Respondent No.2 was never served with the report of the Food Analyst and as a result thereof the Respondent No. 2 could not file the appeal before the DO as provided under Section 46 (4) of FSSA and Rule 2.4.6 of the FSSR, hence the statutory right of the Respondent No.2 has been infringed and in view thereof the instant adjudication application is liable to be dismissed by this Hon'ble Court.
- d. For that no opportunity of hearing was provided to Respondent No.2 by the DO, as required under Rule 2.4.6 (1) of the FSSR and hence the instant adjudication application is liable to be dismissed by this Hon'ble Court.
- e. For that the Respondent No.2 is deprived of its statutory right granted under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR to get the 2nd part of the sample analyzed by the referral laboratory (whose report is final and supersedes the report of the Food Analyst) and in view thereof the instant application for adjudication is liable to be dismissed by this Hon'ble Court.
- f. For that the right guaranteed under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR is fundamental to the defense of Respondent No.2 and the denial of such right to Respondent No.2 for no fault of Respondent No.2 have caused prejudice to the Respondent No.2 and as such the instant application for adjudication is liable to be dismissed by this Hon'ble Court.
- g. For that admittedly the manufacturing date of the sample is 25.04.2012 (mentioned in the report of the Food Analyst). The Best Before Date of the sample is 6 months (mentioned in FA report) and hence the Best Before Date of the sample had expired on 24.10.2012 and hence the statutory right of the Respondent No.2 for getting the 2nd part of the sample analyzed by the referral laboratory (whose report is final & supersedes the report of the Food Analyst) before the expiry of the Best Before Date of the sample has been violated. Reliance is placed on the following judgments;



1. State of Rajasthan - VS - Ashok Oil Industries and Ors. reported in RLW2008 (4) Raj 3468,
wherein the Hon'ble Rajasthan High Court (Jaipur Bench) has inter alia held: "It is a settled position of law that the inordinate delay in launching the prosecution causes serious prejudice to the accused preventing him from exercising his right under Section 13(2) of the Act of 1954".
2. M/s. Milk Specialties Ltd. -vs- State of Rajasthan, reported in 2009 (30) Criminal CC76,
wherein the Hon'ble Rajasthan High Court has inter alia held "that the position of law is almost settled on the point that inordinate delay in launching the prosecution causes serious prejudice to the accused preventing him from his right available under Section 13(2) of the PFA Act".
3. Nemi Chand Agarwal Vs. State of Rajasthan reported in 2012(2) Cr. Law Reporter (Raj.) 830,
wherein Hon'ble Rajasthan High Court has inter alla held "A bare perusal of above goes to show that after receipt of the report of the Public Analyst under Section 13(1), the prosecution could be launched and the copy of the report could be supplied to accused. Sub-section (2) provided that on receipt of the report, the accused could make the application to the Court to get the sample of the articles to be analyzed by the Central Food Laboratory. In the present case, the samples have already been expired in July, 2010, whereas the complaint has been filed in Nov., 2010 and the right which was provided by section 13(2) of the PFA Act has been taken away by the present petitioners. Hence, looking to the above legal position, continuance of proceedings would be an abuse of process and hence liable to be quashed."
 - h. For that in the present case, the Best Before date of the sample having expired long before, no purpose would be served to get the sample analyzed by the referral laboratory at this point of time.
 - i. That without prejudice to the above, it is stated that the Food Analyst had failed to apply the Packaging and Labelling regulations in its proper perspective and in view thereof the report of the Food Analyst is erroneous, misconceived and hence cannot be relied upon.
 - j. For that it is stated that Regulation 2.2.2 (5) (ii) of the Packaging and Labelling Regulations prescribes the manner of declarations regarding the addition of colours and / or Flavours to be displayed on the label. Regulation 2.2.2 (5) (ii) (b) of the Packaging and Labeling Regulations lays down the manner of declaration to be made on labels in case of extraneous addition of flavouring agents. Regulation 3.1.10 (1) of the Food Products Standards and Food Additives defines Flavoring Agents and its types e.g.
 1. Natural Flavours and Natural Flavouring Substances
 2. Nature - Identical Flavouring Substances and
 3. Artificial Flavoring Substances.

That there is no requirement in the aforesaid Regulation to state the common name of the artificial flavouring agent and further common name" of Artificial Flavouring Substances has not been prescribed under the FSSA, FSSR and the



regulations made thereunder. The label in question accordingly contains the prescribed declaration relating to flavouring agents which is, "CONTAINS ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES)"

In view of the above, it is clear that all declarations have been made in accordance with the Packaging & Labelling Regulations, particularly Regulation 2.2.2 (5) (1) (b) which is in relation to flavouring substances and therefore, by no stretch of imagination it can be inferred that the label declaration of the sample violates the provision of the Packaging and Labelling Regulations and hence the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court.

- k. For that on the basis of above discussions, it can safely be inferred that the Food Analyst report is erroneous and accordingly the instant adjudication application filed basis the report of the Food Analyst is liable to be dismissed.
- l. For that the affixing of the label and / or label declaration is the duty of the manufacturer and the Respondent No.2 cannot be held liable or account of not labeling the article of food in accordance with the provisions of the FSSA and/or the FSSR and the regulations made thereunder. Reliance is placed on the following judgments;
1. Anil Kumar - VS - State of Punjab and another; reported in 2010 (1) FAC 378.
 2. Vijay Kumar - VS - State of Punjab; reported in 2012 (1) FAC 402.
- m. For that the FSO who had occasion to deal with the sample did not mention anything about misbranding of label or contravention of the regulations. The instant adjudication application has only relied on the Food Analyst report for misbranding of the label. The misbranding of label does not require Food Analyst opinion and the FSO who has drawn the samples had not mentioned anything about the label of the sample, on the contrary the Fso had picked the samples basis the doubt of adulteration of the sample. In view thereof the respondents are not liable to be prosecuted as the FSO who had the occasion to see the sample did not mention anything about the misbranding and it does not require the upiralon of the Food Analyst. The Respondent No.2 relies upon the following judgments:
1. Dr. Manu Seth, Managing Director, M/S Tata Chemicals Ltd - VS - Food Inspector through The Advocate General, State of Punjab and others; reported in 2008 (2) FAC 203.
 2. P. Robert Immanuel and Another - VS - The State Represented by the Food Inspector; reported in 2009 (2) FAC 199.
 3. Messrs Gopi Nath & Sons - VS - The State of Himachal Pradesh and Another; reported in 1980 (II) Prevention of Food Adulteration Cases Pg - 358.
- n. For that the Respondent No.2 states that the Food Analyst Report, clearly states that the sample size sent to the Food Analyst was 1.2 litres, which is in contravention of the Laboratory and Sample Analysis Regulations, which mandates that in case of Fruit Juice / Fruit Drink / Fruit Squash, a sample size of 1 litres is to be sent to the Food Analyst for the purpose of analysis.



- o. For that the falsity of the allegation as alleged in the Food Analyst Report and in the Application is apparent from the facts submitted above and as such the instant case is liable to be dismissed.
- p. For that the Respondents would suffer irreparable loss of reputation and otherwise, if the adjudication application is not dismissed.
- q. For that allowing the application to continue against the Respondent No.2 even when the allegations in the Food Analyst Report / Adjudication Application do not make out any offence would tantamount to a gross abuse of the process of Court.
- r. For that in view of the aforesaid facts and circumstances the alleged contravention of provisions of the FSSA, FSSR and the Packaging and Labelling Regulations has not been proved beyond doubt and hence the instant case is liable to be dismissed by this Hon'ble Court under Rule - 3.1.2 (2) of the FSSR.

The Respondents craves leave to add, alter or amend any of the foregoing grounds and reserves their right to cross examine the witnesses of the applicant and submitting their defense evidence. The Respondent, therefore, prays: a) That this Hon'ble Court be pleased to dismiss the application and the entire proceedings. b) Pass such and further order/orders as this Hon'ble Court may deem fit and proper . एवं अप्रार्थी संख्या 3 अपने जवाब परिवाद में अप्रार्थी संख्या 3 ने परिवाद में वर्णित तथ्यों को अस्वीकार किया एवं बताया कि That the respondents are being prosecuted for alleged violation of Section 26 (2) (ii) of the Food Safety and Standard Act, 2006 and the Rules framed thereunder and punishable u/s - 52 of the FSSA. The applicant's case as alleged in the application is that the Food Safety Officer, Sri. Rajesh Kumar Ramchandani (hereinafter referred to as "FSO") visited the premises of M/s Sawariya Ice Candy on 05.06.2012 and on the basis of doubt of adulteration, took the sample of "Maaza" 1.2 litre (hereinafter referred to as "Sample") for analysis and accordingly issued Form VA to the vendor. Thereafter the sample was send to the Food Analyst, Udaipur for analysis. The Food Analyst, Udaipur in its report dated 13.06.2012 opined that the sample was Misbranded under section 3(1)(zf)(C)(i) of the FSSA. The Food Analyst opined that the label printed on the wrapper violates the law in the following manner:

A statement is printed regarding addition of colour and flavor – Contains permitted synthetic food colour (110) and added flavours (Natural, Nature Identical and Artificial Flavouring Substances) but the common name of flavor has not been given as required by provision to regulation no. 2.2.5 (ii) (c) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

It is further alleged that thereafter the applicant directed the vendor to provide the details from where the sample was purchased and in pursuant thereto the vendor stated that the sample was purchased from M/s Munat Brothers and thereafter M/s Munat Brothers was directed to furnish the details from where it had purchased the sample wherein M/s Munat Brothers stated that the sample was purchased from M/s Hindustan Coca-Cola Beverages Private Limited, Tushar Cold Drinks. Thereafter Tushar Cold Drinks was directed to furnish the details of the seller and in pursuant thereto Tushar Cold Drinks had only furnished the copy of the license then again Tushar Cold Drinks was directed to furnish the details from where it had purchased the sample but no reply was filed by Tushar Cold Drinks. Thereafter it is alleged that the applicant vide letter dated 03.07.2012 submitted the documents



pertaining to this case with the Designated Officer cum Chief Medical Officer and in pursuant thereto past authorization the present application is being filed. Lastly it was alleged that in the present case by selling misbranded product Section 26 (2) (it) of the FSSA and FSSR has been violated and the same is punishable under Section 52 of the FSSA. That it is pertinent to mention herein that at the relevant point of time the Respondent No.3 was working as Carrying and Forwarding Agent (C&FA) of Hindustan Coca-Cola Beverages Private Limited (HCCBPL) from its depot situated at Udaipur, Rajasthan under the terms and conditions of the agreement dated 30.01.2012. The Respondent No.3 was responsible for storage, transportation and distribution of the products of HCCBPL. Copy of the agreement is enclosed herewith and marked as Annexure - 1. That it is further pertinent to mention herein that admittedly the first notice pertaining to the instant sampling was send to the Respondent No.3 vide letter dated 18.07.2012 (which is a part of record) wherein the Respondent No.3 was directed to furnish certain details. That the respondent No.3 submits that the Respondent No.3 was not given the opportunity to file appeal against the report of Food Analyst as guaranteed under Section 46 (4) of FSSA and Rule 2.4.6 of the FSSR. Section 46 (4) and Rule 2.4.6 of the FSSR is reproduced below for ready reference:

Section 46 (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.

Rule 2.4.6: Appeal to the Designated Officer:

1. When an appeal as provided under sub section 4 of section 46 is preferred to the Designated Officer by the Food Business Operator against the report of the Food Analyst, the Designated Officer, if so decides, within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity of being heard shall forward one part of the sample to the referral lab Such appeal shall be in Form - VIII which shall be filed within 30 days from the date of the receipt of copy of the analysis report from the Designated Officer. Report of the referral laboratory shall be final in this regard.

That for ready reference "food business" and "food business operator" as defined under FSSA is reproduced below:

Section 3(n) "Food business"

"food business" means any undertaking whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, sale of food ingredients.

Section 3(o) "food business operator"

'food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;

That the Respondent No.3 states and submits that the Respondent No.3 being the Food Business Operator as defined under Section 3(o) of the FSSA had the statutory right granted under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR to get the 2nd part of the sample analyzed by the referral laboratory (whose report is final and supersedes the report of the Food Analyst) which has been denied in the instant case and in view thereof



the instant application for adjudication is liable to be dismissed by this Hon'ble Court. That without prejudice to the above, the Respondent No. 3 states that Regulation 2.2.2 (5) (ii) of the Packaging and Labelling Regulations prescribes the manner of declarations regarding the addition of colours and / or Flavours to be displayed on the label. It is submitted that Regulation 2.2.2 (5) (1) (b) of the Packaging and Labelling Regulations lays down the manner of declaration to be made on labels in case of extraneous addition of flavouring agents. The relevant portion of the said Regulation is reproduced herein below for your reference:

2.2.2 (5) (ii) (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) Regulation, 2011."

Regulation 3.1.10 (1) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 defines Flavoring Agents and its types e.g.

1. Natural Flavours and Natural Flavouring Substances.
2. Nature - Identical Flavouring Substances and ill) Artificial Flavoring Substances.

That the Respondent No.3 states and submits that there is no requirement in the aforesaid Regulation to state the common name of the artificial flavouring agent and further "common name" of Artificial Flavouring Substances has not been prescribed under the FSSA, FSSR and the regulations made thereunder. The label in question accordingly contains the prescribed declaration relating to flavouring agents which is, "CONTAINS ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES)"

In view of the above, it is clear that all declarations have been made in accordance with the Food Safety & Standards (Packaging & Labelling) Regulations 2011, particularly Regulation 2.2.2 (5) (ii) (b) which is in relation to flavouring substances and therefore, there can be no case of misbranding on this account and hence the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court. That Respondent No.3 states that the Food Analyst Report, clearly states that the sample size sent to the Food Analyst was 1.2 litres, which is in contravention of the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011. Regulation 2.3.1 of the Laboratory and Sample Regulations mandates that in case of Fruit Juice / Fruit Drink / Fruit Squash, a sample size of 1 litres is to be sent to the Food Analyst for the purpose of analysis. The said Regulation is reproduced below for your kind reference:

"Procedure of Sampling.--

2.3.1: Quantity of sample to be sent to the Food Analyst:- (1) The quantity of sample of food to be sent to the Food Analyst /Director for analysis shall be as specified in the table below.

That the Respondent No.3 submits that admittedly the Respondent No.3 is not the manufacturer of the sample and the Respondent No.2 cannot be held liable for misbranding of the sample. The Respondent No.3 states and submits that the FSO who had occasion to deal with the sample did not mention anything about misbranding of label or contravention of the regulations. The instant adjudication application has only relied on the Food Analyst report for misbranding of the label. The misbranding of label does not require Food Analyst



opinion and the FSO who has drawn the samples had not mentioned anything about the label of the sample, on the contrary the FSO had picked the Samples basis the doubt of adulteration of the sample. In view thereof the Respondent No.3 is not liable to be prosecuted as the FSO who had the occasion to see the label declaration of the sample did not mention anything about the misbranding and it does not require the opinion of the Food Analyst. That being aggrieved by the above Application filed in this Hon'ble Court and the entire proceeding initiated by the applicant, the Respondent No.3 is seeking for dismissal of the application on the following amongst other grounds which are set out herein below which are without prejudice to each another:

GROUND

- a. For that that the Application filed is ex-facie illegal and hence it is liable to be dismissed in order to secure the ends of justice.
- b. For that the application and the documents appended thereto taken on face value do not make out any prima facie case against the respondent.
- c. For that the Respondent No.3 was never served with the report of the Food Analyst and as a result thereof the Respondent No. 3 could not file the appeal before the DO as provided under Section 46 (4) of FSSA and Rule 2.4.6 of the FSSR, hence the statutory right of the Respondent No.3 has been infringed and in view thereof the instant adjudication application is liable to be dismissed by this Hon'ble Court.
- d. For that no opportunity of hearing was provided to Respondent No.3 by the DO, as required under Rule 2.4.6 (1) of the FSSR and hence the instant adjudication application is liable to be dismissed by this Hon'ble Court.
- e. For that the Respondent No.3 is deprived of its statutory right granted under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR to get the 2nd part of the sample analyzed by the referral laboratory (whose report is final and supersedes the report of the Food Analyst) and in view thereof the instant application for adjudication is liable to be dismissed by this Hon'ble Court.
- f. For that the right guaranteed under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR is fundamental to the defense of Respondent No.3 and the denial of such right to Respondent No.3 for no fault of Respondent No.3 have caused prejudice to the Respondent No.3 and as such the instant application for adjudication is liable to be dismissed by this Hon'ble Court.
- g. For that admittedly the manufacturing date of the sample is 25.04.2012 (mentioned in the report of the Food Analyst). The Best Before Date of the sample is 6 months (mentioned in FA report) and hence the Best Before Date of the sample had expired on 24.10.2012 and hence the statutory right of the Respondent No.3 for getting the 2nd part of the sample analyzed by the referral laboratory (whose report is final & supersedes the report of the Food Analyst) before the expiry of the Best Before Date of the sample has been violated. Reliance is placed on the following judgments;



1. State of Rajasthan - VS - Ashok Oil Industries and Ors. reported in RLW2008 (4) Raj 3468, wherein the Hon'ble Rajasthan High Court (Jaipur Bench) has inter alia held: "It is a settled position of law that the inordinate delay in launching the prosecution causes serious prejudice to the accused preventing him from exercising his right under Section 13(2) of the Act of 1954".
2. M/s. Milk Specialties Ltd. -vs- State of Rajasthan, reported in 2009 (30) Criminal CC76, wherein the Hon'ble Rajasthan High Court has inter alia held "that the position of law is almost settled on the point that inordinate delay in launching the prosecution causes serious prejudice to the accused preventing him from his right available under Section 13(2) of the PFA Act".
3. Nemi Chand Agarwal Vs. State of Rajasthan reported in 2012(2) Cr. Law Reporter (Raj.) 830, wherein Hon'ble Rajasthan High Court has inter alia held "A bare perusal of above goes to show that after receipt of the report of the Public Analyst under Section 13(1), the prosecution could be launched and the copy of the report could be supplied to accused. Sub-section (2) provided that on receipt of the report, the accused could make the application to the Court to get the sample of the articles to be analyzed by the Central Food Laboratory. In the present case, the samples have already been expired in July, 2010, whereas the complaint has been filed in Nov., 2010 and the right which was provided by section 13(2) of the PFA Act has been taken away by the present petitioners. Hence, looking to the above legal position, continuance of proceedings would be an abuse of process and hence liable to be quashed."
- h. For that in the present case, the Best Before date of the sample having expired long before, no purpose would be served to get the sample analyzed by the referral laboratory at this point of time.
- i. That without prejudice to the above, it is stated that the Food Analyst had failed to apply the Packaging and Labelling regulations in its proper perspective and in view thereof the report of the Food Analyst is erroneous, misconceived and hence cannot be relied upon.
- j. For that it is stated that Regulation 2.2.2 (5) (ii) of the Packaging and Labelling Regulations prescribes the manner of declarations regarding the addition of colours and / or Flavours to be displayed on the label. Regulation 2.2.2 (5) (ii) (b) of the Packaging and Labeling Regulations lays down the manner of declaration to be made on labels in case of extraneous addition of flavouring agents. Regulation 3.1.10 (1) of the Food Products Standards and Food Additives defines Flavoring Agents and its types e.g.
 1. Natural Flavours and Natural Flavouring Substances
 2. Nature - Identical Flavouring Substances and
 3. Artificial Flavoring Substances.

That there is no requirement in the aforesaid Regulation to state the common name of the artificial flavouring agent and further common name" of Artificial Flavouring Substances has not been prescribed under the FSSA, FSSR and the



regulations made thereunder. The label in question accordingly contains the prescribed declaration relating to flavouring agents which is, "CONTAINS ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES)"

In view of the above, it is clear that all declarations have been made in accordance with the Packaging & Labelling Regulations, particularly Regulation 2.2.2 (5) (1) (b) which is in relation to flavouring substances and therefore, by no stretch of imagination it can be inferred that the label declaration of the sample violates the provision of the Packaging and Labelling Regulations and hence the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court.

- k. For that on the basis of above discussions, it can safely be inferred that the Food Analyst report is erroneous and accordingly the instant adjudication application filed basis the report of the Food Analyst is liable to be dismissed.
- l. For that the affixing of the label and / or label declaration is the duty of the manufacturer and the Respondent No.3 cannot be held liable or account of not labeling the article of food in accordance with the provisions of the FSSA and/or the FSSR and the regulations made thereunder. Reliance is placed on the following judgments;
1. Anil Kumar - VS - State of Punjab and another; reported in 2010 (1) FAC 378.
 2. Vijay Kumar - VS - State of Punjab; reported in 2012 (1) FAC 402.
- m. For that the FSO who had occasion to deal with the sample did not mention anything about misbranding of label or contravention of the regulations. The instant adjudication application has only relied on the Food Analyst report for misbranding of the label. The misbranding of label does not require Food Analyst opinion and the FSO who has drawn the samples had not mentioned anything about the label of the sample, on the contrary the Fso had picked the samples basis the doubt of adulteration of the sample. In view thereof the respondents are not liable to be prosecuted as the FSO who had the occasion to see the sample did not mention anything about the misbranding and it does not require the upiralon of the Food Analyst. The Respondent No.3 relies upon the following judgments:
1. Dr. Manu Seth, Managing Director, M/S Tata Chemicals Ltd - VS - Food Inspector through The Advocate General, State of Punjab and others; reported in 2008 (2) FAC 203.
 2. P. Robert Immanuel and Another - VS - The State Represented by the Food Inspector; reported in 2009 (2) FAC 199.
 3. Messrs Gopi Nath & Sons - VS - The State of Himachal Pradesh and Another; reported in 1980 (II) Prevention of Food Adulteration Cases Pg - 358.
- n. For that the Respondent No.3 states that the Food Analyst Report, clearly states that the sample size sent to the Food Analyst was 1.2 litres, which is in contravention of the Laboratory and Sample Analysis Regulations, which



mandates that in case of Fruit Juice / Fruit Drink / Fruit Squash, a sample size of 1 litres is to be sent to the Food Analyst for the purpose of analysis.

- o. For that the falsity of the allegation as alleged in the Food Analyst Report and in the Application is apparent from the facts submitted above and as such the instant case is liable to be dismissed.
- p. For that the Respondents would suffer irreparable loss of reputation and otherwise, if the adjudication application is not dismissed.
- q. For that allowing the application to continue against the Respondent No.2 even when the allegations in the Food Analyst Report / Adjudication Application do not make out any offence would tantamount to a gross abuse of the process of Court.
- r. For that in view of the aforesaid facts and circumstances the alleged contravention of provisions of the FSSA, FSSR and the Packaging and Labelling Regulations has not been proved beyond doubt and hence the instant case is liable to be dismissed by this Hon'ble Court under Rule - 3.1.2 (2) of the FSSR.

The Respondents craves leave to add, alter or amend any of the foregoing grounds and reserves their right to cross examine the witnesses of the applicant and submitting their defense evidence. The Respondent, therefore, prays: a) That this Hon'ble Court be pleased to dismiss the application and the entire proceedings. b) Pass such and further order/orders as this Hon'ble Court may deem fit and proper . अप्रार्थीगण की ओर से प्रस्तुत जवाब परिवाद शामिल पत्रावली होकर रिकार्ड पर है।

दिनांक 17.12.2013 को अधिवक्ता विपक्षी संख्या 3 हाजिर आये एवं अतिरिक्त कथन बाबत सारहीनता आक्षेप प्रस्तुत किया जो कि शामिल पत्रावली है। अपने कथन में अप्रार्थी संख्या 3 ने बताया कि प्रतिपक्षी संख्या 3 श्री नीलकंठ प्रोपराइटर फर्म तुषार कोल्ड ड्रिंक्स उदयपुर की ओर से अतिरिक्त जवाब रिप्रजेन्टेशन निम्न प्रकार प्रस्तुत कि हस्तगत न्याय निर्णयन प्रार्थना पत्र आवेदक खाद्य सुरक्षा अधिकारी चितौड़गढ़ राजेश कुमार रामचन्दानी द्वारा खाद्य विश्लेषक अशोक कुमार आर्य, जनस्वास्थ्य प्रयोगशाला, उदयपुर द्वारा प्रेषित विश्लेषण रिपोर्ट संख्या LS 569/2012/579 दिनांकित 13.06.2012 में मिसब्राण्ड के लिये वर्णित आक्षेप कि "COMMON NAME OF FLAVOR HAS NOT BEEN GIVEN AS REQUIRED BY PROVISION TO REGULATION No. 2.2.5 (ii) of FS & S (Packaging & Labelling) REGULATION] 2011" को आधार बनाकर निर्णयन करवाने हेतु माननीय न्यायालय में प्रस्तुत किया गया है। न्याय निर्णयन प्रार्थना पत्र के बचाव में प्रतिपक्षी संख्या 3 द्वारा सुनवाई की पेशी 17.05.2013 को अपना रिप्रजेन्टेशन प्रस्तुत कर दिया गया है। तत्पश्चात् कुछ नये तथ्यों की जानकारी होने पर विदाउट प्रिज्यूडिस यह अतिरिक्त बचावी रिप्रजेन्टेशन प्रस्तुत किया जा रहा है। इसी प्रोडक्ट माजा का दिनांक 03.05.2013 को FSO रेवन्त सिंह कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, जैसलमेर द्वारा लिये गये नमूना कोड एवं सिरियल नं. N-245 के सम्बन्ध में अपील करने हेतु प्रेषित पत्रांक नं. FSSA/2013/304-307 दिनांकित 27.05.2013 के तहत उत्पादक कम्पनी



हिन्दुस्तान कोका-कोला बेवरेजेज प्रा०लि० के एजेन्ट “थार एजेन्सी” जैसलमेर - 345001 द्वारा प्रस्तुत की गई अपील पर रेफरल फूड लेबोरेट्री, कोलकाता द्वारा सम्पन्न विश्लेषण जिसका सर्टिफिकेट नं. G14-12/DD/2013(PT.1)-545 दिनांकित 12.07.2013 में वर्णित जांच परिणाम Opinion "The sample conforms to the standard laid down under products and food additive "Regulations, 2011 तथा Label के सम्बन्ध में जो कि हस्तगत प्रकरण में अन्तरनिहित माजा की बोतल के समान ही Labelling दर्शा रखी है, को सही एवं नियमानुसार मानकर सेम्पल को पास करके सर्टिफिकेट जारी किया गया है। इस सर्टिफिकेट के आधार पर अभियोजन अधिकारी “मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी जैसलमेर” ने आरोपी वेण्डर आदि को आरोप मुक्त मानकर जांच बन्द की गई है। पत्र दिनांक 27.05.2013, विश्लेषण रिपोर्ट नं. 204 दिनांकित 20.05.2013 की गई अपील दिनांकित 26.06.2013, पत्रांक नं. 507-510 दिनांकित 30.09.2013 एवं रेफरल लेबोरेट्री का सर्टिफिकेट दिनांकित 13.09.2013 की फोटोस्टेट प्रतियां संलग्न परिशिष्ट -1, 2, 3, 4 एवं 5 है। तदनुसार समान प्रकृति के पेय MINUTE MAID PULPY ORANGE नामक पेय के एक अन्य नमूना नम्बर N-249 दिनांकित 05.05.2013 के सम्बन्ध में फूड एनालिस्ट उदयपुर की रिपोर्ट दिनांकित में वर्णित समान आशय का लेबलिंग के सम्बन्ध में वर्णित आक्षेप "COMMON NAME OF ARTIFICIAL FLAVOURING SUBSTANCE USED IN THE PRODUCT NOT GIVEN ON THE LABEL" अपील के तहत रेफरल लेबोरेटरी कोलकाता द्वारा प्रेषित सर्टिफिकेट नं. 602 दिनांकित 09.10.2013 में उक्त आशय का कोई आक्षेप नहीं लगाया गया है एवं सेम्पल पास कर दिया गया है। पत्र दिनांक 27.05.2013, विश्लेषण रिपोर्ट दिनांक 23.05.2013, रेफरल लेबोरेटरी की रिपोर्ट नं. 602 दिनांकित 09.10.2013 एवं कार्यवाही बन्द करने का पत्र 07.11.2013 संलग्न परिशिष्ट -6, 7, 8 व 9 है। बमुताबिक प्रावधान नियम 2.4.6 (1) FS & S Rules, 2011 रेफरल लेबोरेट्री की रिपोर्ट “फाइनल” मानी जाती है। तदनुसार उक्त अन्य सेम्पल माजा कोड एण्ड सिरियल नं. N-245 दिनांकित 03.05.2013 एवं रेफरल MINUTEMAID PULPY ORANGE कोड व सिरियल नं. N-249 दिनांकित 05.05.2013 पास किया जा चुका है। इसलिये खाद्य विश्लेषक की रिपोर्ट उक्त परिशिष्ट -2 दिनांकित 20.05.2013 एवं परिशिष्ट -7 दिनांकित 23.05.2013 अतिलंघित (Superceed) हो चुकी है। हस्तगत प्रकरण में आवेदक एफ.एस.ओ. अथवा डी.ओ. मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ ने प्रतिपक्षी नं. 3 नीलकंठ को रेफरल लेबोरेटरी के लिये उक्तानुसार अनिवार्य तौर पर दिये जाने योग्य अपील का अवसर प्रदान नहीं किया था। इस कारण प्रतिपक्षी नं. 3 रेफरल लेबोरेट्री से विश्लेषण करवाने से वंचित रखा गया है। इस आघातक वंचना के सम्बन्ध में प्रतिपक्षी नं. 3 ने अपने जवाब में खुलासा तथ्य संयोजित कर श्रीमान के समक्ष जवाब प्रस्तुत कर दिया गया है। उक्ततः COMMON NAME OF ARTIFICIAL FLAVORING SUBSTANCES अंकित नहीं का आक्षेप



रैफरल लेबोरेट्री द्वारा उक्त अन्य दोनों प्रकरणों में निरस्त कर दिया गया है एवं हस्तगत प्रकरण समान प्रकृति का होने से रैफरल लेबोरेट्री की राय (Opinion) को इस प्रकरण में भी लागू किया जाकर दिशा-निर्देशन लिया जाना प्रार्थनीय है। तदनुसार हस्तगत प्रकरण निरस्त किया जाना विधि एवं प्रक्रिया सम्मत है। खाद्य सुरक्षा एवं मानक अधिनियम 2006 तथा इसके तहत बने हुये विभिन्न विनियमों 2011 में COMMON NAME OF ARTIFICIAL FLAVORING SUBSTANCES को परिभाषित नहीं किया गया है एवं न ही इस तथाकथित COMMON NAME की व्याख्या की गई है। इसलिये हस्तगत प्रकरण मिस कान्सेप्ट ऑफ लॉ एण्ड फेक्ट्स के आधार पर दायर होने से निरस्तनीय है। उक्त परिस्थितियों में हस्तगत प्रकरण निरस्त किया जाना न्याय सम्मत है। अतः अतिरिक्त कथन प्रस्तुत कर निवेदन है कि हस्तगत प्रकरण निरस्त फरमाया जावे। अतिरिक्त जवाब परिवाद शामिल पत्रावली होकर रिकार्ड पर है। दिनांक 22.04.2015 को अप्रार्थी संख्या 3 की और अतिरिक्त प्रारम्भिक आपत्तियां प्रस्तुत की गई। अपनी अतिरिक्त प्रारम्भिक आपत्ति में अप्रार्थीगण ने बताया कि

That the duty cast upon the Food analyst to analyze the food items, inter alia, to know the contents of the food item, to ascertain the presence of any adulterant in the food item rendering it unsafe for consumption, to ascertain whether any coloring or flavoring agent is employed, to ascertain whether natural or artificial coloring or favoring agent is employed, to ascertain whether the declaration on the label of the food item is true and correct, to see whether the declaration on the label reflect the true contents contained in the product or not and if not, then point out the contents which are not correctly reflected therein. It has also to find out whether the flavoring or colouring agent used is permitted one. It further implies that the Food Analyst is required to identify the artificial flavoring agent and provide its common name, if any. Only then the food analyst can declare that the food item in question is misbranded. In otherwords, unless the common name of the artificial favoring agent is indicated, it cannot be said that the product is misbranded for not mentioning of the common name in the label. In a situation where the common name is given it is also imperative for Food analyst to ascertain the common name given is correct or incorrect. For this he as an expert in under obligation to ascertain what is common name of the artificial flavouring agent and cannot simply brushed aside his responsibility by declaring common name of the artificial flavouring agent is not given. That the Respondents states that Regulation 2.2.2 (5) (ii) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 prescribes the manner of declarations regarding the addition of colours and / or Flavours to be displayed on the label. It is submitted that Regulation 2.2.2 (5) (ii) (b) of the Packaging and Labelling Regulations lays down the manner of declaration to be made on labels in case of extraneous addition of flavouring agents. The relevant portion of the said Regulation is reproduced herein below for ready reference:

"2.2.2 (5) (ii) (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) Regulation, 2011."

Regulation 3.1.10 (1) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 defines Flavoring Agents and its types e.g.

1. Natural Flavours and Natural Flavouring Substances
2. Nature – Identical Flavouring Substances and iii) Artificial Flavoring Substances.

That the Respondents states and submits that there is no requirement in the aforesaid Regulation to state the 'common name of the artificial flavouring agent and further "common name" of Artificial Flavouring Substance Agent has not been prescribed under the FSSA, FSSR and the regulations made thereunder. The label in question accordingly contains the prescribed declaration relating to flavouring agents which is, "CONTAINS ADDED FLAVOURS (NATURAL, NATURE- IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES)". It is further stated that the above mentioned regulations are based on the CODEX standards and it is pertinent to refer to 5.1 (C) of the CODEX Standard 107-1981 on the general standard for labeling of food additives when sold, which lays down the following guidelines for the labeling of flavors as:

"In the case of mixtures of flavourings, the name of each flavoring present in the mixture need not be given. The generic expression "flavour" or "flavouring "may be qualified by the words "natural", nature identical", 'artificial" or a combination of these words as appropriate. This provision does not apply to flavor modifiers but does apply to "herbs and spices" which generic expressions may be used where appropriate."

It is submitted that Food Safety and Standards Authority of India has filed its order dated 12.09.2012 before the Hon'ble Supreme Court Of India in Writ Petition (Civil) No. 6810f 2004, Centre for Public Interest Litigation -vs- Union of India and Others, where an expert group on labeling has opined that the labeling provisions of carbonated beverages is in compliance with the Food Safety and Standards (Packaging and Labeling) Regulations, 2011. Relevant extract of the order is reproduced for your convenience:

The expert group observed that the labeling provisions of carbonated beverages is in compliance with the Food Safety and Standards (Packaging and Labeling) Regulations, 2011

(Ref. Analytical Data ou carbonated water- Central Food Laboratory, Ghaziabad).

The order also gives a detailed description of the labeling declaration given on the labels of carbonated water. On perusal, it is clear that the declaration, as alleged to be misbranded by the food analyst, is in compliance with the Food Safety and Standards (Packaging and Labeling) Regulations 2011. The copy of the order passed by the expert group and judgment dated 22.10.2013 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 681 of 2004 are enclosed herewith and marked as Annexure - 1 & 2 respectively.

The point that is clearly emerges that common name of artificial flavoring agent is not known to the Food Analyst. Thus it also emerges that it is the prerogative of the food operator to give any common name and there is no method to identify its correctness. In



view thereof the report of the Food Analyst is contrary to the provisions of the FSSA Act, Rules and the Regulations framed there under.

The Respondents states and submits that the proviso to Regulation 2.2.2 (5) (ii) (c) states that International Numerical Identification (INS) no. of the colours used shall also be indicated. Proviso to Regulation 2.2.2 (5) (ii) (c) are reproduced below for ready reference:

Proviso to Regulation 2.2.2 (5) (ii) (c);

"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".

From the aforesaid proviso it is clear that it speaks about the INS no. of colour and not INS no. of added flavouring substance as opined by the Food Analyst in its report.

In view of the above, it is clear that all declarations have been made in accordance with the Food Safety & Standards (Packaging & Labelling) Regulations 2011, particularly Regulation 2.2.2 (5) (ii) (b) which is in relation to flavouring substances and therefore, there can be no case of misbranding on this account and hence the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court.

That it is further pertinent to mention herein that in a yet another separate case of Jodhpur, Sri. Rajnish Sharma, Food Safety Officer, Jodhpur had picked the sample of "Maaza 1.2 litre" (sample product as involved in the present adjudication proceeding) and had sent one part to the Food Analyst, Jodhpur for analysis. The Food Analyst vide its report bearing no. L.S./191/ Act/2013/196 dated 15.05.2013 had opined that "The Common name of artificial flavoring substance used in the product not given on the label". Contravention of Regulation No. 2.2.2 (5) (ii) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Copy of the Food Analyst report bearing no. L.S./191/Act/2013/196 dated 15.05.2013 is annexed herewith and marked as Annexure - 3.

The aforesaid FA report was challenged by Sri. Supriyo Das (employee of HCCBPL) by filing an appeal u/s - 46(4) of the FSSA and in pursuant thereto, the Designated Officer had sent one part of the sample to the Referral Laboratory, Kolkata for reanalysis. The Referral Laboratory, Kolkata vide its Certificate of Analysis dated 07.11.2013 had reproduced the label declaration of the sample and opined that the sample conforms to the standard laid down under Regulation no. 2.3.10 of Food Safety and Standards (Food Products and Food Additive) Regulations, 2011. Copy of the appeal and the Certificate of Analysis by the Referral Laboratory are annexed herewith and marked as Annexure - 4 and Annexure - 5 respectively.

That it is further pertinent to mention herein that in a yet another separate case of Bikaner, the Food Safety Officer had picked the sample of "Maaza 1.2 litre" (sample product as involved in the present adjudication proceeding) and had sent one part to the Food Analyst, Jaipur for analysis. The Food Analyst vide its report bearing no. LS /1064/ Act/2013/660 dated 20.06.2013 had opined that "The Common name of artificial flavors not mentioned". Contravention of Regulation No. 2.2.2 (5) (ii) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Copy of the Food Analyst report is annexed herewith and marked as Annexure - 6.



The aforesaid FA report was challenged by M/s Laxmi Agency by filing an appeal u/s - 46(4) of the FSSA and in pursuant thereto, the Designated Officer had sent one part of the sample to the Referral Laboratory, Kolkata for reanalysis. The Referral Laboratory, Kolkata vide its Certificate of Analysis dated 09.10.2013 had reproduced the label declaration of the sample and opined that the sample conforms to the standard laid down under Regulation no. 2.3.10 of Food Safety and Standards (Food Products and Food Additive) Regulations, 2011. Copy of the appeal and the Certificate of Analysis by the Referral Laboratory are annexed herewith and marked as Annexure - 7 and Annexure - 8 respectively. 14) That 2 (two) separate case of Dausa, the Food Safety Officer had picked the sample of "Maaza 1.2 litre" (sample product as involved in the present adjudication proceeding) and "Maaza 200ml" and had sent one part of each sample to the Food Analyst, Jaipur for analysis. The Food Analyst vide its report bearing no. LS/1067/ Act/2013/663 dated 20.06.2013 and report bearing no. LS/1066/ Act/2013/662 dated 20.06.2013 had opined that "Common name of artificial flavors not mentioned". Contravention of Regulation No. 2.2.2 (5) (ii) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Copies of the Food Analyst report in both the cases are annexed herewith and marked as Annexure 9 & Annexure – 10 respectively.

The aforesaid FA reports were challenged by Sharda Agency in both the cases by filing an appeal u/s - 46(4) of the FSSA and in pursuant thereto, the Designated Officer had sent one part of each sample to the Referral Laboratory, Kolkata for reanalysis. The Referral Laboratory, Kolkata vide its Certificate of Analysis dated 07.11.2013 and 13.09.2013 had reproduced the label declaration of the sample and opined that the sample conforms to the standard laid down under Regulation no. 2.3.10 of Food Safety and Standards (Food Products and Food Additive) Regulations, 2011. Copies of the Certificate of Analysis by the Referral Laboratory in both cases are annexed herewith and marked as Annexure - 11 & Annexure - 12 respectively.

That as per the aforesaid 4 (Four) reports of the Referral Laboratory, Kolkata it can safely be inferred that the Referral Laboratory, Kolkata had not agreed with the opinion of the Food Analyst that common name of artificial flavouring substance need to be mentioned. In view thereof in the instant case alleging the sample as Misbranded because the common name of artificial flavouring substance is not mentioned is erroneous and cannot be relied upon. In view thereof the instant adjudication proceeding initiated basis the report of the Food Analyst is liable to be dismissed by this Hon'ble Court.

That, the above additional Preliminary Legal Objection are relevant and necessary to be decided first along with other Preliminary Legal Objections as set out in representations filed on behalf of Respondents dated 17.05.2013 and 17.12.2013 and as available on record of the case file. It is therefore, most humbly prayed that, above additional Preliminary Legal Objections be taken on record and be decided first before deciding the case on merits, and that, in the light of these presents if deemed fit this Hon'ble Court may be pleased to dismiss the instant adjudication application and the entire proceedings.

दिनांक 22.04.2015 को अप्रार्थीगण की और से प्रार्थना पत्र अन्तर्गत नियम 3.1.1(8) एवं (10) खाद्य सुरक्षा मानक नियम 2011 के तहत प्रस्तुत किया जो कि शामिल पत्रावली होकर रिकार्ड पर है। अपने प्रार्थना पत्र में अप्रार्थीगण ने बताया कि उक्त प्रकरण में आज की पेशी वास्ते सुनाने आरोप सारांश (Explain the offence



with Act, Rules or Regulations) हेतु निर्धारित है। प्रस्तुत प्रकरण में प्रतिपक्षी नं. 2 एवं 3 अपने अधिकृत पैरोकार बसंतीलाल पोखरना, एडवोकेट के जरिये रिप्रेजेंट होकर आक्षेपित आरोपों से इन्कार करते हैं तथा आरोपी पक्ष FSO एवं DO आदि गवाहों को जो सूचि गवाह में वर्णित है को खाने शहादत में आकर जिरह युक्त बयानों से साबित करने का आव्हान करते हैं। न्यायानुकूल निर्णयन एवं सुनवाई हेतु उक्त नियम 2011 के नियम 3.1.1(10) के तहत नियुक्त होने योग्य Panel Advocate के द्वारा आरोपी पक्ष रिप्रेजेंट होना जरूरी है। अतः प्रार्थना-पत्र प्रस्तुत कर निवेदन है कि इस प्रकरण का गुणावगुण पर निस्तारण करने हेतु आरोपी पक्ष के समस्त गवाहों के बयान लिए जाकर प्रतिरक्षार्थ जिरह का अवसर प्रदान किया जावे एवं विसंगतियों को टालने हेतु आरोपी पक्ष को Panel Advocate द्वारा रिप्रेजेंट करने का निर्देशन दिया जावे। प्रार्थना पत्र शामिल पत्रावली होकर रिकार्ड पर है।

दिनांक 10.03.2021 को अधिवक्ता अप्रार्थीगण हाजिर आये। विद्वान अधिवक्ता द्वारा की गई बहस प्रार्थना पत्र दिनांक 22.04.2015 को सुना गया। अधिवक्ता अप्रार्थी ने प्रार्थना पत्र में वर्णित तथ्यों को दोहराया एवं खाद्य सुरक्षा अधिकारी एवं अभिहित अधिकारी को साक्ष्य में हाजिर रहने की ईशतदुआ की। हमने पत्रावली का अवलोकन किया। तथ्यों का मनन किया। हम खाद्य सुरक्षा अधिकारी द्वारा किये गये अनुसंधान से पूर्ण रूप से संतुष्ट है जो कि खाद्य सुरक्षा अधिकारी द्वारा अनुसंधान के संबंध में पूर्ण दस्तावेज प्रस्तुत किये गये इसके साथ ही प्रकरण विगत लम्बे समय से लम्बित चल रहा है ऐसी स्थिति में अतिरिक्त शहादत किये जाने से प्रकरण में अनावश्यक विलम्ब होगा, ऐसी स्थिति में अप्रार्थीगण द्वारा प्रस्तुत प्रार्थना पत्र अन्तर्गत खाद्य सुरक्षा एवं मानक अधिनियम 2006 विनियम 2011 के नियम 3.1.1(8) (10) प्रस्तुत दिनांक 22.04.2015 को सारहीन होने से खारीज किया जाता है।

हमने पत्रावली का अवलोकन किया। प्रकरण में दिनांक 03.08.2017 को अप्रार्थी संख्या 3 की और से लिखित बहस प्रस्तुत की गई जो कि शामिल पत्रावली होकर रिकार्ड पर है। अपनी लिखित बहस में अप्रार्थी संख्या 3 ने बताया कि That, the Respondent No. 3 is being prosecuted for alleged violation of Section 26 (2) (ii) of the Food Safety and Standard Act, 2006 and the Rules framed thereunder and punishable u/s - 52 of the FSSA. The Applicant's case as alleged in the Application is that, the Food Safety Officer, Sri. Rajesh Kumar Ramchandani visited the premises of M/s Sawariya Ice Candy on 05.06.2012 and on the basis of doubt of adulteration, took the sample of "Maaza" 1.2 litre (hereinafter referred to as "Sample") for analysis and accordingly issued Form VA to the vendor. Thereafter, the sample was sent to the Food Analyst, Udaipur for analysis. The Food Analyst, Udaipur in its report dated 13.06.2012 opined that the sample was Misbranded under section 3 (1) (zf)(C)(i) of the FSSA. The Food Analyst opined that a statement is printed regarding addition of colour and flavor – Contains permitted synthetic food colour (110) and added flavours (Natural, Nature - Identical and Artificial Flavouring Substances) but the common name of



flavor has not been given as required by provision to regulation 110. 2.2.5 (ii) (c) of the Food Safety and Standards (Packaging and Labelling) Regulations, That, it is pertinent to mention herein that at the relevant point of time the Respondent No. 3 was working as Carrying and Forwarding Agent (C&FA) of Hindustan Coca-Cola Beverages Private Limited (HCCBPL) from its depot situated at Udaipur, Rajasthan. The, Respondent No. 3 states and submits that, admittedly the Respondent No. 3 was not given the opportunity to file appeal against the report of Food Analyst as guaranteed under Section 46 (4) of FSSA and Rule 2.4.6 of the Food Safety and Standards Rules, 2011 (hereinafter referred to as "FSSR"). Section 46 (4) and Rule 2.4.6 of the FSSR is reproduced below for ready reference:

Section 46 (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.

Rule 2.4.6: Appeal to the Designated Officer:

1. Witen an appeal as provided under sub section 1 of section 46 is preferred to the Designated Officer by the Food Business Operator against the report of the Food Analyst, the Designated Officer, if so decides, within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity of being heard shall forward one part of the sample to the referral lab. Such appeal shall be in Form - VIII which shall be filed within 30 days from the date of the receipt of copy of the analysis report from the Designated Officer. Report of the referral laboratory shall be final in this regard.

That, the Respondent No. 3 being the Food Business Operator as defined under Section 3(o) of the FSSA had the statutory right granted under Section 46 (4) of the FSSA and under Rule 2.4.6 (1) of the FSSR to get the 2nd part of the sample analyzed by the referral laboratory (whose report is final and supersedes the report of the Food Analyst) which has been denied in the instant case and in view thereof the instant application for adjudication is liable to be dismissed by this Hon'ble Court. Reliance is placed on the below mentioned judgments;

- Hon'ble Madras High Court (Madurai Bench) in Writ Petition (MD) No. 19499 of 2014; R. Chandramohan - vs - The Food Safety Officer Vikaramasingapuram and Ors.
- Rameshwar Dayal Vs. State of UP 1962(2) FAC 197 (Supreme Court)
- Bhanwar Lal Vs. State of Rajasthan; 2000(1) FAC 80 [Rajasthan HC
- S.B.Criminal Misc Petition No. 2362/2011 [Jodhpur HC]; Bagtawar Mal Vs. State of Rajasthan
- Hon'ble Gwalior High Court in Cr. Misc Case no. 629/2012; Sri. Prakash Desai & Anr Vs. State of M.P.
- Hon'ble Indore High Court in MCRC No. 8517/2014; Inderjit Walia Vs. State of M.P.

That, the Laboratory wherein the sample in the instant case has been tested analyzed is not accredited by NABL nor it has been recognized by the Food Authority under Section 43 of the FSSA Act, hence, the analysis made in the aforesaid laboratory cannot be relied upon. As per section 3(p) of FSSA, "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. 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. Further, section 43(1) mandates that, the Food Analyst has to analyze the food in a laboratory accredited by NABL and also recognized by the Food Authority and notified by it. It is therefore, apparent that 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) i.e. not accredited by NABL and recognized and notified by the Food Authority under section 43 of FSSA, the analysis made in such laboratory cannot be relied upon. Reliance is placed on judgment passed by Hon'ble Bombay High Court in Writ Petition (L) No. 1688/2015; M/s Nestle India Ltd - vs - The Food Safety and Standards Authority of India & Others. [Para 96. - It is not in dispute that the Laboratories in which these food samples were tested were either not accredited by NABL or not recognized by the Food Authority under section 43(1) of the Act or even if they were accredited or notified, they were not accredited to make analysis in respect of lead in the samples. There is no material on record to show whether the procedure of testing samples mentioned under the Act and Rules and Regulations framed which is thereunder has been followed. There is a grave doubt about the samples being tested at Avon Food Lab (Pvt.) Ltd. and even if they are so tested, prima facie, it does appear that procedure of testing the samples has not been followed. The contention of Mr. Pracha, the learned Counsel for Respondent No.2 that in view of the Notification issued on 05-07-2011 even the State and Central Laboratories, though not notified, were entitled to test the samples, is incorrect. The said Notification reads 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 3rd Floor, FDA Bhawan,

Kotla Road New Delhi-110002

Dated : 5th July, 2011

To,

Food Safety Commissioner of all States/UTs

Subject :- Clarification on the status of Public Labs functioning at Centre/State/UT after the promulgation of FSS Act, 2006 with effect from 5 th 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 results 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 Governments it is clear that the process is likely to take some time and the labs will not be able to get accreditation before 5th 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 function 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 FRSL, Ghaziabad will function as the referral laboratories.

Yours sincerely, (S. S. Ghonkrota) Director"



The said Notification clearly mentions that the said Notification had been issued till the Laboratories under the FSS Act, 2006 were accredited by NABL and recognized and notified by the Food Authority. It is an admitted position that in 2012 the several Laboratories have been so recognized by the Food Authority and notified by issuing Notifications. The contention of the learned Counsel for Respondent No.2 is, WPL/1688/2015 therefore, not acceptable. The contention of Mr. Khambatta the learned Senior Counsel for Respondent Nos. 3 and 4 that this issue which was raised in rejoinder by the Petitioner was an afterthought, also cannot be accepted and, therefore, it is not possible to place reliance on the reports of the Food Analysts given by various States in respect of analysis of the samples of the product of the Petitioner and therefore decision taken by the Food Authority relying on these reports therefore will have to be set aside....)

That, without prejudice to the above, the Respondent no. 3 states and submits that, the above order/letter dated July 5, 2011 issued by FSSAI stating - "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 function of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006." renders the provisions of FSSA nugatory and is against the settled position that the Laboratories and method of analysis under erstwhile PFA Act was undefined and not prescribed, and therefore, reports of such undefined labs could not be relied upon and could not be read in evidence, as held by The Hon'ble High Court of Kerala in the matter of K.N Sadanandan Vs. Food Inspector and in the matter of V. Prasanth Vs. Food Inspector.

It is further submitted that, since year 2012, several Laboratories accredited by NABL have been recognized and notified by the Food Authority by issuing Notifications. The Public Health Laboratory, Udaipur has not been recognized and notified by Food Authority in any of its notifications, as above. Therefore, the report of unrecognized laboratory as that of Public Health Laboratory, Udaipur cannot be relied upon and read in evidence in the instant matter.

The Respondent No. 3 states and submits that, all declarations have been made in accordance with the Food Safety & Standards (Packaging & Labelling) Regulations 2011, and therefore, there can be no case of misbranding on this account, and hence, the report of the Food Analyst basis which the instant application for adjudication has been filed is liable to be dismissed by this Hon'ble Court

The Respondent No. 3 states and submits that, the report of the Food Analyst, does not mean that this ipse dixit would be conclusive and binding on this Learned Court. It is for this Learned Court to weigh the food analyst opinion and reach its own finding, Reliance is placed on the below mentioned judgments;

- Apex Court in Municipal Corporation of Delhi - vs - Kacheroo Mal reported in AIR 1976 SC 394/1976 CILJ 336
- Hon'ble Madhya Pradesh High Court in Prakash Desai - vs - State of MP; reported in 2013(3) Crimes270/2012(4) MPHT26

That, the Food Safety Officer was not examined in the instant case to prove the manner of taking sample and to establish the case of prosecution etc. and the respondent has not been afforded an opportunity to cross examine the Food Safety Officer, who has taken the sample and sent it to the Food Analyst as the Food Safety Officer was not examined. The respondent



has been deprived to cross-examine the Food Safety Officer, and hence, the Respondent was not given reasonable opportunity to defend, and, in view thereof, the adjudication application is liable to be dismissed by this Learned Court. Reliance is placed on judgment passed in M/s Cargill India Pvt. Ltd. Vs. State of Uttrakhand reported in 2016(1) FAC 417 and in Ramakant Gupta – vs - The State of Chhattisgarh and Ors. reported in 2016 CriLJ 3386; The Respondent No. 3 states and submits that, admittedly the respondent no. 3 is not the manufacturer of the sample and consequently the respondent was not responsible/ liable for the label declaration of the sample. For ready reference Section 80 (B) (2) (d) (i) of the FSSA is reproduced below: Section 80 - Defences which may or may not be allowed in prosecution under this Act;

(B) Defence of due diligence ----

(2) Without limiting the ways in which a person may satisfy the requirements of clause (1), a person satisfies those requirements if it is proved –

(d) in the case of an offence involving the sale of food, that –

(i) the person sold the food in the same condition as and when the person purchased it;

The Respondent states that, admittedly the respondent has sold the food article in the same condition as it was purchased hence the present respondent is not liable in view of Section 80 (B) (2) (d) (i) of the FSSA and in view thereof the adjudication application is liable to be dismissed by this Learned Court.

That, the affixing of the label and / or label declaration is the duty of the manufacturer and the Respondent No.3 cannot be held liable on account of not labeling the article of food in accordance with the provisions of the FSSA and / or the FSSR and the regulations made thereunder. Reliance is placed on the following judgments;

- Anil Kumar - vs - State of Punjab and another; reported in 2010 (1) FAC 378.
- Vijay Kumar - vs - State of Punjab; reported in 2012 (1) FAC 402.
- FSSA Case No. 18B - 121/15-16, FSO - vs - Sri. Prakash Chandra Chourasiya & Anr. And FSSA Case No. 09B - 121/15- 16, FSO - vs - Sri. Vitlesh Loya (Sazapur (Madhya Pradesh) FSSA Cases.

That, without prejudice to the above, it is submitted that the FSO who had occasion to deal with the sample did not mention anything about misbranding of label or contravention of the regulations. The instant adjudication application has only relied on the Food Analyst report for misbranding of the label. The misbranding of label does not require Food Analyst opinion and the FSO who has drawn the samples had not mentioned anything about the label of the sample, on the contrary the FSO had picked the samples basis the doubt of adulteration of the sample. In view thereof the respondent no.3 is not liable to be prosecuted as the FSO who had the occasion to see the sample did not mention anything about the misbranding and it does not require the opinion of the Food Analyst. The Respondent No.3relies upon the following judgments:

- Dr. Manu Seth, Managing Director, M/s Tata Chemicals Ltd -vs - Food Inspector through The Advocate General, State of Punjab and Others; reported in 2008 (2) FAC 308.
- P. Robert Immanuel and Another - vs - The State Represented by the Food Inspector; reported in 2009 (2) FAC 199.



- Messrs Gopi Nath & Sons vs - The State of Himachal Pradesh and Another, reported in 1980 (II) Prevention of Food Adulteration Cases Pg - 358.

The Respondent No. 3 states and submits that, in view of the aforesaid facts and circumstances the alleged contravention of provisions of the Packaging and Labelling Regulations has not been proved beyond doubt and hence the instant case is liable to be dismissed by this Hon'ble Court under Rule - 3.1.2 (2) of the FSSR.

That, the Respondent No. 3 craves leave to add, alter or amend any of the foregoing grounds at the time of hearing.

हमने हाजिर विद्वान अधिवक्ता अप्रार्थी को सुना गया। अधिवक्ता अप्रार्थी द्वारा अपनी बहस में लिखित बहस में वर्णित तथ्यों को दोहराया एवं प्रकरण में अप्रार्थीगण के विरुद्ध कार्यवाही समाप्त किये जाने की ईशतदुआ के साथ अपनी बहस समाप्त की। हमने पत्रावली का बागौर आद्यौपांत अवलोकन किया। तथ्यों का मनन किया। पत्रावली को वास्ते निर्णय रिजर्व किया गया।

पत्रावली वास्ते निर्णय पेश हुई। हमने पत्रावली का बागौर आद्यौपांत अवलोकन किया। पत्रावली पर उपलब्ध दस्तावेजात का गहनता पूर्वक अध्ययन/परिशीलन किया। आवेदक खाद्य सुरक्षा अधिकारी द्वारा प्रस्तुत फार्म नंबर 5 ए की प्रति से जाहिर होता है कि खाद्य सुरक्षा अधिकारी द्वारा विक्रेता/मालिक को मॅंगो ड्रिंक (माजा) का नमूना वास्ते जांच लेने हेतु सूचना दी गई जिस पर विपक्षी संख्या 1 एवं मौके के गवाहान के हस्ताक्षर है। आवेदक खाद्य सुरक्षा अधिकारी द्वारा नमूना लिये जाने हेतु विक्रेता/मालिक से नियमानुसार खाद्य पदार्थ क्रय किया गया जिसकी पुष्टि नमूना खरीद बिल से होती है, उस पर भी विक्रेता एवं गवाहान की शहादत के रूप में हस्ताक्षर है। आवेदक खाद्य सुरक्षा अधिकारी द्वारा तैयार किया गया मौका फर्द रिपोर्ट दिनांक 05.06.2012 का अवलोकन किया। मौका फर्द रिपोर्ट दिनांक 05.06.2012 से जाहिर होता है कि उक्त खाद्य पदार्थ मॅंगो ड्रिंक (माजा) जिसका नमूना खरीद बिल पत्रावली पर उपलब्ध है से क्रय किया एवं उस पर अभिहित अधिकारी (खाद्य सुरक्षा) व मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ की हस्ताक्षरशुदा पेपर स्लिप संख्या AM-206 नियमानुसार प्रत्येक नमूना भाग पर ऊपर सीरे से लेकर नीचे पेंदे तक व वापस सीरे तक लगातार गोलाई में गोन्द से चिपकाई एवं धागे से बांध कर नियमानुसार ब्रास सील से सील चपड़ी किया। इस से स्पष्ट होता है कि खाद्य पदार्थ को नियमानुसार सील किया गया है। हमने खाद्य सुरक्षा अधिकारी द्वारा तैयार फार्म नंबर 6 की प्रति का अवलोकन किया। कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के पत्रांक/एफएसएसए/2012/3048 दिनांक 05.06.2012 से पत्रवाहक देवीलाल (सहायक कर्मचारी) के साथ आउटर कवर में सील बंद नमूने फार्म नंबर 6 एवं सील्ड लिफाफे खाद्य विश्लेषक, खाद्य सुरक्षा एवं मानक प्रयोगशाला, उदयपुर को नमूना क्रमांक AM-206 मय लिफाफे के जमा कराये जाने हेतु भिजवाया गया। हमने खाद्य विश्लेषक



जन स्वास्थ्य प्रयोगशाला उदयपुर की रसीद को अवलोकन किया जिससे से जाहिर होता है कि पत्रवाहक देवीलाल (सहायक कर्मचारी) द्वारा उक्त नमूना मय लिफाफे के दिनांक 05.06.2012 को जमा कराया गया। हमने आवेदक खाद्य सुरक्षा अधिकारी द्वारा प्रस्तुत नियम 2.4.1(10)(ii) एवं 2.4.1(10)(iii) के मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ की रसीद का अवलोकन किया जिस से जाहिर होता है कि आवेदक खाद्य सुरक्षा अधिकारी द्वारा विपक्षी संख्या 1 से लिये गये शेष 3 नमूनों एवं फार्म संख्या 6 की प्रतियों को नियमानुसार अभिहित अधिकारी को जमा कराये गये। विपक्षी संख्या 1 द्वारा आवेदक खाद्य सुरक्षा अधिकारी को प्रस्तुत किये गये बिल संख्या 2762 दिनांक 30.05.2012 मैसर्स मुणेत ब्रदर्स, आवरीमाताजी का अवलोकन किया जो कि पत्रावली पर उपलब्ध है। मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ द्वारा पत्रांक/एफएसएसए/12/4096 दिनांक 10.07.2012 द्वारा मैसर्स मुणेत ब्रदर्स, आवरीमाताजी को फार्म संख्या 5 ए की प्रति व खाद्य अनुज्ञा पत्र/रजिस्ट्रेशन पत्र, मालिक/भागीदारी की सूचना एवं क्रय बिल के संबंध में सूचना चाही गई। इस पर मैसर्स मुणेत ब्रदर्स द्वारा दिनांक 17.07.2012 को प्रार्थना पत्र प्रस्तुत कर उक्त पत्र के संदर्भ में वांछित सूचना उपलब्ध कराई गई। उक्त पत्र एवं दस्तावेज शामिल पत्रावली है। इस पर मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ द्वारा पत्रांक/एफएसएसए/12/4336-38 दिनांक 18.07.2012 द्वारा मैसर्स हिन्दुस्तान कोकाकोला, ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर को फार्म संख्या 5 ए की प्रति व खाद्य अनुज्ञा पत्र/रजिस्ट्रेशन पत्र, मालिक/भागीदारी की सूचना एवं क्रय बिल के संबंध में सूचना चाही गई। इस पर TUSHAR COLD DRINKS, Udaipur के पत्र दिनांक 23.07.2012 से वांछित सूचना उपलब्ध कराई गई जो कि शामिल पत्रावली होकर रेकार्ड पर है। मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ द्वारा पत्रांक/एफएसएसए/12/4622 दिनांक 09.08.2012 से मैसर्स हिन्दुस्तान कोकाकोला, ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर से उक्त खाद्य पदार्थ मेंगो ड्रिंक माजा का क्रय बिल व वाणिज्यिककर रजिस्ट्रेशन प्रमाण पत्र चाहा गया, उक्त पत्र शामिल पत्रावली होकर रिकार्ड पर है। इसका प्रत्युत्तर मैसर्स हिन्दुस्तान कोकाकोला, ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर द्वारा प्रस्तुत नहीं किया जाना जाहिर होता है। हमने खाद्य विश्लेषक, उदयपुर की रिपोर्ट **LS 569/Act/2012/579 Dated 13-06-2012** का गहनता पूर्वक अवलोकन किया। खाद्य विश्लेषक, उदयपुर रिपोर्ट एवं मतानुसार अनुसार :-

Report No LS 569 /2012/579 Dated 13-06-2012

Certified that I ASHOK KUMAR ARYA duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006) for RAJASTHAN STATE received from Sh. Rajesh Kumar Ramchandani, Food Safety Officer District Chittorgarh, a sample of Ready to Serve Fruit Drink (Mango Drink) bearing code no. and serial no. AM 206 of Designated officer of District Chittorgarh on 05.06.12 for analysis.



The condition of seals on the container and the outer covering on receipt was as follows---- Intact and unbroken. The seals fixed on the container and outer cover tallied with the specimen seal impression sent separately, along with the copy of the memorandum in sealed envelope.

I found the sample to be Ready to Serve Fruit Drink (Mango Drink) falling under Regulation No. 2.3.10.1 of Food Safety and Standards(food products standards and food additive) Regulations 2011.The sample was in a condition fit for analysis and has been analyzed on 07.06.12 to 12.06.12 and the result of its analysis is given below-

ANALYSIS REPORT --

(i) Sample description:- The sample contained in a market sealed-12 ltr. Tarrow mouth plastic bottled screwed with lid.

(ii) Physical appearance:- Light yellow in colour, nice flavour, sweet in taste.

(iii) Label :-- Brand- Maaza , Name of food Ready to Serve Fruit Drink (Mango Drink) Mfg. By- Hindustan Coca-Cola Beverages pvt. Ltd. GOBLEJ, Gujarat-387440, Net quantity- 1.2 ltr., Batch no.- 36 AH, Mfd-25-04-12, Best Before six months from manufacture, Nutritional information – given as per law, List of ingredients – given, Surface area of package – more than 100 sq. cm., Green symbol Veg. - given.

The label printed on the wrapper violates the law in following manner.

- A. statement is printed regarding addition of colour and flavour "CONTAINS PERMITTED SYNTHETIC FOOD COLOUR (110) AND ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES) but the common name of flavour has not been given as required by provision to regulation no. 2.2.5(ii)(c) of FS&S(Packaging & Labelling), regulation 2011.

S. No.	Quality characteristics	Name of method of test used	Result	Prescribed standards as per (a) Food Safety and Standards(food products Standards and food additive) Regulations 2011[2.3.10(1)] (b) As per label declaration For proprietary food (c) As per provisions of the Act, rules, and regulations for both the above
1	Total soluble solids (m/m)	Instrumental method, Ref:- Manual method-D.G.H.S.	14.3 %	10% (min.)
2	Test for artificial sweeteners	Phenolsulphuric acid test, Ref:- Manual method-D.G.H.S. (Food Additives)	Negative	Negative
3	Test for sucrose	Modified salivanoff method, Ref:- Manual method-D.G.H.S. (Milk & Milk Products)	Positive	Positive
4	Added colouring matter	Paper Chromatographic method, Ref - Manual method-D.G.H.S. (Food Additives)	Permitted synthetic food color Sunset yellow found Present	Permitted

Opinion:- The sample is misbranded under section 3(1)(zf)(C)(i) of the food safety and standards act, 2006.

खाद्य विश्लेषक, उदयपुर की रिपोर्ट से जाहिर होता है कि आवेदक खाद्य सुरक्षा अधिकारी राजेश कुमार रामचन्दानी द्वारा लिया खाद्य पदार्थ का नमूना जो कि ब्रास सील से सील्ड अवस्था



में खाद्य विश्लेषक का प्राप्त हुआ। उक्त नमूना निांक 07.09.2012 से 12.06.2012 तक जांच के लिये उचित था। उक्त नमूने के संबंध में खाद्य विश्लेषक द्वारा अपनी रिपोर्ट में अवगत कराया गया है कि Ready to Serve Fruit Drink (Mango Drink) falling under Regulation No. 2.3.10.1 of Food Safety and Standards(food products standards and food additive) Regulations 2011. एवं The label printed on the wrapper violates the law in following manner. - Statement is printed regarding addition of colour and flavour "CONTAINS PERMITTED SYNTHETIC FOOD COLOUR (110) AND ADDED FLAVOURS (NATURAL, NATURE-IDENTICAL AND ARTIFICIAL FLAVOURING SUBSTANCES) but the common name of flavour has not been given as required by provision to regulation no. 2.2.5(ii)(c) of FS&S(Packaging & Labelling), regulation 2011. है, उक्त नमूना जिस पर पर मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ की हस्ताक्षरशुदा पेपर स्लिप संख्या AM-206 उक्त खाद्य पदार्थ मेंगो ड्रिंक (माजा) खाद्य सुरक्षा एवं मानक अधिनियम, 2006 की धारा 3(1)(zf(C)(i) के तहत मिस ब्राण्ड स्तर का पाया गया है। जिसकी पुष्टि स्वरूप खाद्य विश्लेषक द्वारा रिपोर्ट प्रेषित की गई है जो कि रिकार्ड पर है। हमने अभिहित अधिकारी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के रजिस्टर्ड पत्रांक/एफएसएसए/2012/3944 दिनांक 03.07.2012 का अवलोकन किया, जिसमें अभिहित अधिकारी द्वारा मैसर्स अप्रार्थी संख्या 1 को खाद्य सुरक्षा एवं मानक अधिनियम, 2006 नियम 2011 की धारा 46(4) के तहत खाद्य विश्लेषक, उदयपुर से प्राप्त रिपोर्ट की प्रति प्रेषित की एवं रेफरल खाद्य प्रयोगशाला से जांच कराये जाने के संबंध में अवगत कराया गया। हमने अभिहित अधिकारी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के रजिस्टर्ड पत्रांक/एफएसएसए/2012/ 3935 दिनांक 03.07.2012 का अवलोकन किया, जिसमें अभिहित अधिकारी द्वारा मैसर्स सांवरिया आईस कैंडी, मण्डफिया से क्रय बिल के संबंध सूचना चाही गई। हमने अभिहित अधिकारी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के रजिस्टर्ड पत्रांक/एफएसएसए/2012/4545 दिनांक 03.08.2012 का अवलोकन किया, जिसमें अभिहित अधिकारी द्वारा मैसर्स हिन्दुस्तान कोकाकोला ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर से फर्म के संविधान के संबंध सूचना चाही गई। इस पर मैसर्स हिन्दुस्तान कोकाकोला ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर द्वारा दिनांक 23.07.2012 से उक्त सूचना अभिहित अधिकारी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ को उपलब्ध कराई गई जो कि रिकार्ड पर है। मैसर्स हिन्दुस्तान कोकाकोला ब्रेवरेज प्राईवेट लिमिटेड, उदयपुर द्वारा खाद्य सुरक्षा अनुज्ञा पत्र 12212042000034 प्रेषित की जो कि मैसर्स TUSHAR COLD DRINKS, Udaipur का होकर दिनांक 31.12.2012 तक नवीनीकृत था। मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ द्वारा पत्रांक/एफएसएसए/2012/5495 दिनांक 09.10.2012 द्वारा खाद्य सुरक्षा एवं मानक अधिनियम, 2006 नियम 2011 की धारा 36 की उपधारा 3(e) के तहत अभियोजन आवेदन प्रस्तुत किये जाने की अभियोजन स्वीकृति



आवेदक खाद्य सुरक्षा अधिकारी को दी जाकर अधिकृत किया गया है। उक्त समस्त दस्तावेज शामिल पत्रावली होकर रिकार्ड पर है। विपक्षीगण अपने जवाब परिवाद में उठाये गये तथ्यों के संबंध में विपक्षीगण को अभिहित अधिकारी द्वारा खाद्य विश्लेषक उदयपुर की रिपोर्ट प्रेषित की जाकर जरिये रजिस्टर्ड पत्र से रेफरल खाद्य प्रयोगशाला से नमूना जांच हेतु अवगत करा दिया किन्तु विपक्षीगण अधिनियम की धारा 46(4) का प्रयोग निर्धारित समयावधि में नहीं किया गया प्रतीत होता है। इसके साथ ही विपक्षीगण द्वारा अपने जवाब परिवाद में उठाये गये तथ्यों के संबंध में हमारा अभिमत है कि तथ्य अपने जवाब परिवाद में उठाये गये हैं उन तथ्यों का स्पष्टीकरण आवेदक खाद्य सुरक्षा अधिकारी दस्तावेजी साक्ष्य से कराया गया है, जहाँ तक विपक्षीगण द्वारा प्रस्तुत न्यायिक दृष्टांत का प्रश्न है उक्त न्यायिक दृष्टांत हस्तगत प्रकरण पर पूर्ण रूप से चस्पांगी नहीं होते हैं। ऐसी हम आवेदक खाद्य सुरक्षा अधिकारी द्वारा किये गये अनुसंधान से पूर्ण रूप से संतुष्ट हैं, ऐसी स्थिति में हमारा अभिमत है कि पत्रावली में किसी भी प्रकार अतिरिक्त साक्ष्य एवं शहादत की आवश्यकता नहीं है। खाद्य सुरक्षा एवं मानक अधिनियम, 2006 की धारा 25 में खाद्य पदार्थों के आयात एवं धारा 26 में खाद्य कारोबारकर्ता के दायित्वों का उल्लेख किया गया है। इसके अनुसार प्रत्येक खाद्य कारोबारकर्ता यह सुनिश्चित करेगा कि खाद्य वस्तुएं इस अधिनियम और इसके अधीन बनाए गए नियमों और विनियमों कि अपेक्षाओं को अपने नियंत्रणाधीन कारोबार को अंदर उत्पादन, प्रसंस्करण, आयात, वितरण और विक्रय के सभी प्रक्रमों को पूरा करती है। उक्त खाद्य पदार्थ का विपक्षी के पास बिल का नहीं होना जाहिर होता है। निर्माता को निर्माण/पैकिंग के समय ही लेबल पर नियमानुसार सभी आवश्यक पूर्तियां करनी चाहिये थी, किन्तु अप्रार्थी का भी यह दायित्व बनता है कि वह आयातित खाद्य पदार्थ के विक्रय हेतु प्रदर्शित करने से पूर्व यह सुनिश्चित करना चाहिये कि उक्त खाद्य पदार्थ पर नियमानुसार पूर्ति है। सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (ii) का अवलोकन किया अधिनियम की धारा 25 से 27 में निम्न प्रावधान प्रावधित किये गये हैं :-

25. All imports of articles of food to be subject to this Act.

(1) No person shall import into India –

- (i) any unsafe or misbranded or sub-standard food or food containing extraneous matter;
- (ii) any article of food for the import of which a licence is required under any Act or rules or regulations, except in accordance with the conditions of the licence; and
- (iii) any article of food in contravention of any other provision of this Act or of any rule or regulation made thereunder or any other Act.

(2) The Central Government shall, while prohibiting, restricting or otherwise regulating import of article of food under the Foreign Trade (Development and Regulation) Act, 1992



(22 of 1992), follow the standards laid down by the Food Authority under the provisions of this Act and the Rules and regulations made thereunder.

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.

27. Liability of the 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.
- (2) 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.

अधिनियम के अनुसार खाद्य पदार्थ विक्रेता/निर्माता को उक्तानुसार विधि की पालना किया जाना अपेक्षित है, किन्तु इनके द्वारा इसकी जांच नहीं कर खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (ii) का उल्लंघन किया गया है। अतः उक्त प्रावधानों के तहत अप्रार्थीगण को दोष मुक्त नहीं किया जा सकता है, चूंकि अप्रार्थी संख्या 1 जो कि उक्त खाद्य के विक्रेता थे एवं वर्तमान समय में अप्रार्थी संख्या 1 फौत हो चुके हैं एवं उनके विरुद्ध आदेश दिनांक 21.03.2013 से कार्यवाही समाप्त की जा चुकी है। अतः शेष अप्रार्थीगण को खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (ii) का उल्लंघन किये जाने का दोष प्रमाणित माना जाता है एवं अप्रार्थीगण विपक्षी संख्या 2 को उक्त खाद्य पदार्थ के विक्रेता अप्रार्थी संख्या 1 का प्रदायक होने से, विपक्षी संख्या 2 दीपक कुमार पुत्र हिम्मत लाल मुणेत मैसर्स मुणेत ब्रदर्स, चित्तौड़गढ़ रोड, आवरीमाता जिला चित्तौड़गढ़, विपक्षी संख्या 3 जो कि उक्त खाद्य पदार्थ के स्टॉकिस्ट होकर डिस्ट्रीब्यूटर है जिस से अप्रार्थी संख्या 3 नीलकंठ पुत्र नाथुलाल मैसर्स हिन्दुस्तान कोकाकोला बेवरेज प्राइवेट लिमिटेड तुषार कोल्ड ड्रिंक्स 1552/1 चिकलवास, बडगांव उदयपुर को खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (iii) के दोष का दोषी पाया जाकर दोषसिद्धि घोषित की जाती है।

खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (ii) के तहत दोष सिद्ध अभिवृत्तगण को अधिनियम की धारा 52 के अनुसार अर्थदण्ड से दण्डित किये जाने के प्रावधान है। हमने पत्रावली का आद्योपांत अवलोकन किया। तथ्यों का मनन किया। अर्थदण्ड के बिन्दु पर चिंतन किया। खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 के तहत दोष सिद्ध अभिवृत्त को अर्थदण्ड से दण्डित किये जाने के संबंध में अधिनियम की धारा 49 में वर्णित तथ्यों के आधार पर दण्डित किये जाने के प्रावधान प्रावधित किये गये है। अधिनियम की धारा 49 एवं 52 के अनुसार-

49. General provisions relating to penalty.

While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:-

- (a) The amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,



- (b) The Amount of loss caused or likely to cause to any person as a result of the contravention,
- (c) The repetitive nature of the contravention,
- (d) Whether the contravention is without his knowledge, and
- (e) Any other relevant factor,

52. Penalty for misbranded food.

- (1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.
- (2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

विपक्षी संख्या 2 एवं 3 की दोष सिद्धि घोषित की गई है, जिससे विपक्षी संख्या 2 एवं 3 को अर्थदण्ड से दण्डित किया जाना उचित प्रतीत होता है, अतः अभियुक्त संख्या 2 एवं 3 को उक्त खाद्य पदार्थ का विक्रय एवं निर्माण करने से खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा (2) (ii) में अभियुक्त की दोषसिद्धि घोषित किये जाने से अभियुक्त संख्या 2 श्री दीपक कुमार पुत्र हिम्मत लाल मुणेत मैसर्स मुणेत ब्रदर्स, चित्तौड़गढ़ रोड, आवरीमाता जिला चित्तौड़गढ़ को रूपये 20,000/- अक्षरे बीस हजार रूपये, एवं अभियुक्त संख्या 3 श्री नीलकंठ पुत्र नाथुलाल मैसर्स हिन्दुस्तान कोकाकोला बेवरेज प्राइवेट लिमिटेड तुषार कोल्ड ड्रिंक्स 1552/1 चिकलवास, बडगांव उदयपुर को रूपये 80,000/- अक्षरे अस्सी हजार, अर्थात् कुल रूपये 1,00,000/- अक्षरे एक लाख रूपये के अर्थदण्ड से दण्डित किया जाता है।

अभियुक्त उपरोक्त अर्थदण्ड एक माह की अवधि में मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, चित्तौड़गढ़ के मार्फत राजकोष में जमा करावें। मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी चित्तौड़गढ़ को निर्देश दिये जाते हैं कि नियत समयावधि में शास्ति राशि जमा नही कराने पर खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 96 के तहत शास्ति राशि भू-राजस्व के बकाया की तरह वसूल करने की कार्यवाही करावे। निर्णय की प्रति मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी चित्तौड़गढ़ को पालनार्थ भिजवाई जावें। पत्रावली की गणना निर्णित इन्द्राज की जाकर बाद आवश्यक कार्यवाही के अभिलेखागार भिजवाई जावे।

यह निर्णय खुले न्यायालय में आज दिनांक 24.03.2021 को लिखाया जाकर सुनाया गया।

(रतन कुमार)
न्याय निर्णयन अधिकारी
एवं अतिरिक्त जिला मजिस्ट्रेट,
जिला चित्तौड़गढ़

