

न्यायालय न्यायनिर्णयन अधिकारी एवं अतिरिक्त जिला मजिस्ट्रेट, राजसमन्द

(न्याय निर्णयन अधिकारी : श्री रामचरन शर्मा, आर.ए.एस.)

प्रकरण संख्या :-28/2019 (खाद्य सुरक्षा एवं मानक अधिनियम/नियम)

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### अनवान

राज्य सरकार जरिये श्री रमेश चन्द सैनी, खाद्य सुरक्षा अधिकारी, कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी राजसमन्द (राज.)

- प्रार्थी

### बनाम

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2. होलसेलर पार्टनर-प्रथम - रूपल सरूपरिया पुत्र श्री रनजीत सिंह सरूपरिया उम्र 38 वर्ष मैसर्स आर. आर. इन्टरनेशनल, हाउस नं. 649, हिरण मंगरी सेक्टर 13 उदयपुर राज.। निवासी-1-आर-12 गायत्री नगर, हिरण मंगरी सेक्टर 5, उदयपुर, राज.।
3. होलसेलर पार्टनर-द्वितीय - राजेश मेहता मैसर्स आर. आर. इन्टरनेशनल, हाउस नं. 649, हिरण मंगरी सेक्टर 13 उदयपुर राज.। निवासी-180, विवेक नगर, हिरण मंगरी सेक्टर 3, उदयपुर, राज.।
4. होलसेलर फर्म - मैसर्स आर. आर. इन्टरनेशनल, हाउस नं. 649, हिरण मंगरी सेक्टर 13 उदयपुर राज.।
5. निर्माता नोमिनी - आरलेट दा पीएदाद नोरोन्हा पुत्री श्री जेनोविया नोरोन्हा (सीनियर मैनेजर क्वालिटी), मैसर्स मोन्डलेज इण्डिया फूड्स प्रा. लिमि., युनिट 2001, 20 वीं मंजिल टावर नं. 3, विग सी, सेनापति बपत मार्ग, इण्डिया बुल फाइनेन्स सेन्टर, लोवर परेल मुम्बई-400013 निवासी- हाउस नं. 100, 2 मंजिल, सेक्टर 11 ए, चण्डीगढ़-160011। मो.न. 9876694939
6. निर्माता फर्म - मैसर्स मोन्डलेज इण्डिया फूड्स प्रा. लिमि., युनिट 2001, 20 वीं मंजिल टावर नं. 3 विग सी, सेनापति बपत मार्ग, इण्डिया बुल फाइनेन्स सेन्टर, लोवर परेल मुम्बई-400013 - विपक्षी



अन्तर्गत धारा क्रमशः 26(2) (ii), 51 & 58 खाद्य सुरक्षा एवं मानक अधिनियम 2006 व नियम एवं विनियम 2011

### 0 निर्णय 0

प्रकरण का संक्षिप्त विवरण इस प्रकार है कि राज्य सरकार द्वारा राजपत्र में प्रकाशित अधिसूचना दिनांक 29.11.2011 व 8.12.2011 के अनुसरण में श्री रमेश चन्द सैनी, खाद्य सुरक्षा अधिकारी जो वाद में राज्य सरकार है। विपक्षी पर मिसब्राण्ड खाद्य सामग्री निर्माण एवं विक्रय हेतु परिवाद दायर कर अवगत कराया है कि-

अशोक मेहता पुत्र श्री रमेशचंद मेहता उम्र 43 वर्ष जाति मेहता मैसर्स मेहता एजेन्सीज, अपना बाजार, फतेहनगर रोड़, रेलमगरा जिला राजसमंद, निवासी - फतेहनगर रोड़, रेलमगरा राजसमंद जो की किराणा का व्यवसाय करते है। तथा इनकी दूकान मैसर्स मेहता एजेन्सीज, अपना बाजार, फतेहनगर रोड़, रेलमगरा जिला राजसमंद पर दिनांक 25.10.2018 को 04.00 पी.एम. पर वास्ते चेकिंग पहुंचे। खाद्य कारोबारकर्ता विपक्षी से खाद्य पदार्थ विक्रय का रजिस्ट्रेशन दिखाने को कहा गया, जिस पर विपक्षी द्वारा खाद्य पदार्थ विक्रय अनुज्ञप्ति/रजिस्ट्रेशन मौके पर पेश नहीं किया। वक्त निरीक्षण उक्त दुकान में शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) के करीब 70-80 किलोग्राम, 577.5-577.5 ग्राम के प्लास्टिक डिब्बो में पैकड आम जनता के लिये विक्रय हेतु रखे हुए थे। एफ.एस. एस.ए. 2006 के तहत देखने पर मानक स्तर का नही होने का शक होने पर खाद्य पदार्थ शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) मे से 577.5-577.5 ग्राम के 4 पैकड पैकेट्स शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) वास्ते नमूना जांच हेतु खरीदकर उसकी कीमत 660/- रूपये विक्रेता को नगद अदाकर खरीद की रसीद प्राप्त की जिस पर विक्रेता के हस्ताक्षर लिये गये। खाद्य सुरक्षा एवं मानक अधिनियम, 2006 व नियम, 2011 के अन्तर्गत खाद्य पदार्थ शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) के नमूने लिये गये, जिसकी सूचना विपक्षी को फार्म नम्बर 5ए पर दी। प्रार्थी ने अपने आवेदन में उल्लेख किया कि उक्त क्रयशुदा शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) की 04 पॉली पैक को मोतबिरान व विपक्षी की उपस्थिति में चार लेबल तैयार कर चारो नमूना पर अलग-2 चिपकाये गये। चिपकाये गये नमूना भागो पर विपक्षी, गवाहों के हस्ताक्षर करवाये। सील कर अभिहित अधिकारी (खाद्य सुरक्षा) जिला राजसमन्द द्वारा जारी की गई पेपर स्लीप नम्बर ए.आई -824 नियमानुसार चारो नमूना सीलड पर अंकित कर नमूने की सीलड भागो को कब्जे में लिया।

एक सील बंद नमूना मय फार्म न. 6 की प्रति के खाद्य विश्लेषक जन स्वास्थ्य प्रयोगशाला उदयपुर को वास्ते जांच भेजा साथ में फार्म न. 6 की दो प्रति जिस नमूना सील अंकित थी, एक लिफाफे में सील बंद कर खाद्य विश्लेषक को भेजी। नमूने के शेष दो सील बंद भागो को मय फार्म न.6 की प्रतियों के सील बंदकर अभिहित अधिकारी (खाद्य सुरक्षा) राजसमन्द को जमा कराई तथा नमूने के चौथे भाग को भी फार्म न. 6 की प्रति के साथ आउटर कवर में सील बंद कर अभिहित अधिकारी, राजसमन्द को जमा कराया।

खाद्य सुरक्षा अधिकारी को अभिहित अधिकारी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी राजसमंद ने पत्र क्रमांक : मुचिअ/एफएसएसए/2018/3580 दिनांक 18.12.2018 के साथ खाद्य विश्लेषक उदयपुर से प्राप्त जांच रिपोर्ट सं. एल.एस. /378/एक्ट/2018/453 दिनांक 04.12.2018 की जांच रिपोर्ट प्राप्त हुई, जिसके अनुसार AI 824 खाद्य पदार्थ शुगर बोइलड कन्फेन्सरी (केडबरी चौकोलेरिस) का नमूना -

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मिसब्रान्ड होना पाया गया जिसके आधार पर खाद्य सुरक्षा अधिकारी द्वारा नमूने की मूल पत्रावली अभिहित अधिकारी को अभियोजन स्वीकृति हेतु प्रस्तुत किया। अभिहित अधिकारी एवं मुख्य चिकित्सा अधिकारी, राजसमन्द ने दिनांक 13.06.2019 को अभियोजन स्वीकृति जारी कर खाद्य सुरक्षा अधिकारी को उक्त प्रकरण को संबंधित न्याय निर्णयन अधिकारी के समक्ष प्रस्तुत करने हेतु प्राधिकृत किया।

कार्मिक (क-4) विभाग, राज. सरकार की अधिसूचना क्रमांक प.1 (2)कार्मिक/क-4/08 जयपुर दिनांक 05.04.2012 द्वारा राज्य के सभी जिलो में कार्यरत अतिरिक्त जिला मजिस्ट्रेट, जिनके पास सिविल न्यायालय के अधिकार है, को खाद्य सुरक्षा एवं मानक अधिनियम 2006 के अन्तर्गत उनके अधिनस्थ कार्य क्षेत्र के लिये न्यायनिर्णयन अधिकारी नियुक्त किया गया है।

उक्त अधिसूचना के तहत प्रकरण दर्ज रजिस्टर किया जाकर विपक्षी को सूचना पत्र जारी किया जाकर अप्रार्थी को अपना पक्ष प्रत्युत्तर प्रस्तुत करने का अवसर दिया गया। विपक्षीगण द्वारा जरिये अधिवक्ता लिखित बहस पेश कर अपनी बहस में अवगत कराया कि The present application for adjudication has been filed by the Food safety Officer Rajsamand alleging that the sample of CERELAC is substandard and misbranded under Section 3(1)(zf)(C)(i) of the Food safety and Standards Act, 2006 respectively. The present application for adjudication is filed on the basis of the report of the Food Analyst dated 14-10-2016 which states as under; Opinion: " The sample milk Cereal Based Complementary Food Wheat bearing Code and serial no AI 824 of Designated Officer Cum C.M.&H.O. of District Rajsamand is Sub standard as total protein is done not meet as per the prescribed standards as per Food Safety and Standards Regulation 2011. The sample is sub-standard under section 3(1)(zx) of Food safety and standards Act 2006. And The sample is misbranded food under section 3(1)(zf)(C)(i) of Food safety and standards Act 2006. The answering respondents submit that the present adjudication proceedings are wholly misconceived, illegal, devoid of merits and contrary to the provisions of the FSSA, its Rules and FSS Regulations and are hence liable to be dismissed on the following amongst other grounds:  
Test result relied upon by the department has been issued by non-accredited and non-notified laboratory -  
The present proceedings have been initiated on the basis of the opinion formed by the Food Analyst, Food Safety & Standard Laboratory, Udaipur, Rajasthan which is non - accredited and non- notified laboratory under the provisions of Section 3(p) read with Section 43 of the FSSA as such, therefore the report as well as the opinion of Food Analyst is liable to be rejected. It is submitted that the following findings in the Judgment dated 13th August, 2015 of Hon'ble Bombay High Court, in the matter of Nestlé India Limited Vs FSSAI and others-

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are relevant for fulfillment of requirements of "Food Laboratory": Under section 3(p) of the Food Standards and Safety Act ("FSSA") "food laboratory" is a laboratory which is accredited and recognized by NABL and by the Food Authority under Section 43 of the Act. The laboratory, therefore has to pass twin test before it can be said to be a recognized laboratory viz. (i) it has to be accredited by NABL and over the above that (ii) it has also has to be recognized by the Food Authority under section 43 of the Act. Section 43 of the Act mandates that the Food Analyst has to analyze the food in laboratory accredited by NABL and also recognized by the Food Authority and notified by it. If the food is tested in a laboratory which does not fall within the definition of Section 3(p) of the Act and not recognized by the Food Authority, the analysis made in such laboratory cannot be relied (Para 93 of the Judgment); Laboratories in which MAGGI Noodles 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 (Para 96 of the Judgment) Applying the above principles of the judgment, it is submitted that the Food Analyst, Food Safety & Standard Laboratory, Udaipur, Rajasthan is not accredited with NABL (as per information on the NABL website) and has not been notified by FSSAI under Section 43 of the Act. In other words, the Food Analyst, Food Safety & Standard Laboratory, Udaipur, Rajasthan is not accredited or certified to perform analysis for food sample. Therefore, no reliance can be placed on the report of Food Analyst, Food Safety & Standard Laboratory, Udaipur, Rajasthan. The report of analysis basis which the present adjudication proceedings have been initiated is not that of Accredited and Notified Laboratory, the same therefore cannot be relied upon and/or formed basis of present proceedings. The present adjudication proceedings are therefore liable to be set-aside on this ground alone. Apart from the report of the Food Analyst there is no other material against the answering respondents so as to justify continuation of the present proceedings.

**WRONG STANDARDS APPLIED BY THE FOOD ANALYST RENDERS THE FOOD ANALYST REPORT INVALID-**

It is further submitted that the Food Analyst has grossly failed in discharge of his duties and has applied wrong standards while testing the sample of CERELAC fortified baby cereal with milk wheat which is a MILK CEREAL BASED COMPLIETARY FOOD. That the Food Analyst while testing the sample has wrongly tested the sample as per the standards laid down under Regulation 2.1.9.4 of the Food Safety & Standards (Food Product Standards & Food Additives) Regulations, 2011. It is pertinent to highlight that Regulation 2.1.9.4 is applicable only for "Processed Cereal based complementary food which is based only on Cereal and / or legumes (pulses), soya bean, millets,-

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nuts and edible oil seeds, processed to low moisture content and so fragmented as to permit dilution with water, milk or other suitable medium" From the above it is clear that Regulation 2.1.9.4 does not cover MILK CEREAL BASED COMPLEMENTARY FOOD. Whereas, CERELAC Milk Wheat is a milk-based product which is covered under Regulation 2.1.9.3 of the Food Safety & Standards (Food Product Standards & Food Additives) Regulations, 2011 and permits protein content minimum 10%. The Food Analyst has wrongly tested the product against a protein content of minimum 15 % as provided for under Regulation 2.1.9.4. Keeping the above discrepancy in mind, it is clear that the Food Analyst did not apply correct standards while testing the product in question and hence, the report of the Food Analyst carries no value in the eyes of law and deserves to be dismissed.

APPROXIMATE COMPOSITION DECLARED – MEANING AVERAGE VALUES OF CONTENTS INCLUDING PROTEIN- the Respondents further submits that even otherwise the Food Analyst failed to appreciate while alleging the said offence that the Respondents has specifically declared / mentioned "Approximate composition per 100g", while mentioning the "protein", approximate means "usual" or "ordinary" or "average" or "about" value of the "Protein per 100g". However, the Food Analyst without appreciating the That meaning of "Approximate" opined for the alleged offence. Hence, the report of Food Analyst is not sustainable and the present complaint, therefore, deserves to be dismissed.

CERELAC OUTER BOX AND INNER PACK - IS A SINGLE & COMPOSITE PRODUCT AND IT IS NOT 'MISBRANDED'- It is submitted that it is not quite clear as to how the impugned sample of CERELAC is in violation of Section 3(zf) of the FSSA as the report of food analyst is bereft of any material particulars. It is submitted that there must be a specific and clear finding with supported reasons to come to the conclusion that the impugned sample contravenes the provisions of FSSA and or misleads the end consumer. The Food Analyst is also obligated to state that how such a non -declaration has mislead the consumers and what harm has been caused due to the same. However, there is no explanation as such in the report of the Food Analyst and hence, any reliance cannot be placed on such an ambiguous report. Further, we would like to state that the product CERELAC is sold in a carton outer box which bears all the statutory declarations as mandated under the provisions of FSSA. The single unit pack of CERELAC contains the product as described on the outer carton box. By virtue of the nature and composition of CERELAC, it is first packed in an inner pouch (a protective layer usually made of aluminum) and then packed in the outer carton pack which is the selling unit for consumers. The outer carton pack is glued from its top and bottom and becomes one unit to be sold to the consumers. The packages reach the final stage of marketability only after the package containing inner pouch as well as the outer pack is packed together as a single unit for retail sale. This practice is one of the most -



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common ways for packaging food such as cereals, powders, and dried fruits etc. across industry. Thus, the activity of manufacture of CERELAC is complete only after the aluminum pack is packed inside the outer carton and sealed properly. The said outer carton pack is labeled in accordance with the provisions as laid down under FSSAI & rules framed thereunder and other applicable laws and bears all statutory declarations on it as required.

**LEGAL METROLOGY CLARIFICATION IN SUPPORT OF THE RESPONDENTS-** It is further submitted that similar issues were raised by the Food Analysts in the state of Rajasthan with respect to the product MAGGI Noodles with tastemaker. Since the Tastemaker is kept inside the pack of MAGGI Noodles, it is not a separate product. The same is packed inside the packet of Noodles, in addition to that, all the declarations are given on the principle panel of the pack. Tastemaker is neither used separately nor sold individually. In this regard Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, in its letter dated 17-02-2015 clarified that, "there is no objection in declaring the net weight on the pack of MAGGI Instant Noodles with Tastemaker, as the sachet of Tastemaker inside the pack of Maggi Instant Noodles is not meant and/or available for retail sale and hence, the separate declaration of net weight on the sachet of Tastemaker is not required under the legal metrology (Packaged Commodities) Rules 2011.

**DENIAL OF VALUABLE RIGHT OF RE-ANALYSIS BEFORE REFERRAL FOOD -** The Respondents were not provided with the valuable right of re-analysis as guaranteed and mandated under Section 46 (4) of FSSAI and Rule 2.4.6 of the FSS Regulations. Section 46 (4) and Rule 2.4.6 of the FSS Regulations are 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:

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. It is submitted that the Complainant has launched adjudications proceedings against the Respondents without following any of the procedures-

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contemplated under the FSSA and its Rules. The report received from the Food Analyst has not been served on the Respondents before filing of adjudication proceedings. Had it been served on the Respondents, they would have applied and sought for a second test from a competent FSSAI notified NABL Accredited Referral laboratory. In the absence of supplying the report of analysis before launching of adjudication proceedings, the Respondents are deprived of a valuable statutory right of re-analysis, which has caused serious prejudice. On the above ground alone, the impugned adjudication proceedings are liable to be dismissed in favour of the Respondents.

#### FORM VA NOT PROVIDED- VOILATION OF PROCEDURE

The present Respondents have not provided with Form VA as is mandatory under Section 47 (1) (a) of the FSSA Act 2006. That the relevant portion of same is reiterated below for ready reference. Section 47. Sampling and analysis.- When a Food Safety Officer takes a sample of food for analysis, he shall-

(a) give notice in writing of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed;

That it is pertinent to state herein that the Complainant has miserably failed to adhere to the mandatory requirements under the law, and the complaint has been filed with a procedural lapse. That on this ground alone, the impugned adjudication is liable to be dismissed qua the present Respondents.

**QUALIFICATION OF FOOD SAFETY OFFICER-** That the present Respondent further submits that the complainant / FSO did not possess the requisite qualifications as required under Section 37 read with Rule 2.1.3 of FSS Rules, 2011. It is, therefore, submitted that as the complainant / FSO was not duly appointed / qualified under the FSS Act and Rules & Regulations made thereunder, the sampling and the subsequent complaint filed by him is void and therefore, deserves to be dismissed. The reliance is placed on the following judgement of High Court of Jaipur in the D.B. Civil Special Appeal (Writ) Roshan Lal Gurjar & Ors. V/s State of Rajasthan & Ors., D.B. Civil Writ Petition Sri Ram Mishra and Ors. V/s State of Rajasthan & Ors. Applying the ratio of the clarification to the present case, since CERELAC is being sold as a single product in an outer sealed box with all the declarations, there is no requirement of having the said declarations on the inner aluminum pack. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to: treat this written argument as response in terms of Rule 3.1.1(6) of the Rules; drop the present proceedings against the answering respondents and present application in view of the submissions made in the present written arguments; any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. -



*[Handwritten signature]*

*[Handwritten signature]* P.T.O.

पत्रावली पर उपलब्ध रिकार्ड अवलोकन से प्रथम दृष्टया स्पष्ट है कि प्रकरण दिनांक 18.06.2019 से दर्ज होकर काफी समय से लम्बित है, जिसमें वृहत्त सार्वजनिक हित निहित है, समुचित युक्तियुक्त सुनवाई के अवसर पत्रावली पर प्रदत्त किये हुए हैं, दिनांक 23.01.2023 को विपक्षीगण के विद्वान अधिवक्ता श्री अतुल पालीवाल, विद्वान अधिवक्ता श्रीमती वर्षा अतुल पालीवाल उपस्थित, बहस के साथ-2 लिखित बहस पेश कि जो कि न्यायालय के प्रकरण संख्या 30/2017 के साथ सलग्न है, राज्य सरकार जरिये श्री रमेश चन्द्र सैनी, खाद्य सुरक्षा अधिकारी, कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी राजसमन्द (राज.) द्वारा पेश किया गया प्रकरण एवं विपक्षीगण के विद्वान अधिवक्तागण की लिखित बहस का अवलोकन किया गया। प्रकरण में चूंकि विपक्षी का शुगर बोइल्ड कन्फेन्सरी (केडबरी चौकोलेरिस) मिसब्राण्डेड होना पाया गया, अतः विपक्षीगण ने मिसब्राण्ड (खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 3(1)(zx)) खाद्य पदार्थ शुगर बोइल्ड कन्फेन्सरी (केडबरी चौकोलेरिस) का विक्रय कर खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 26 की उप धारा 2(ii) का उल्लंघन किया है जो कि खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 51 में जुर्माने योग्य अपराध है।

वृहत् सार्वजनिक हित (Public interest at large) को दृष्टिगत प्रथम दृष्टया खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 के प्रावधानों के अन्तर्गत दोष सिद्धि कारित होने से अशोक मेहता पुत्र श्री रमेशचंद मेहता उम्र 43 वर्ष जाति मेहता मैसर्स मेहता एजेन्सीज, अपना बाजार, फतेहनगर रोड़, रेलमगरा जिला राजसमंद व अन्य 5 पर कुल राशि 21,000/- रुपये (अक्षरे रूपया इक्कीस हजार रूपये) की पेनल्टी से आरोपित किया जाता है एवं आदेशित किया जाता है कि भविष्य में खाद्य सुरक्षा एवं मानक अधिनियम 2006 एवं नियम 2011 की धारा 26 की उप धारा 2 (II) के प्रावधानों का उल्लंघन नहीं करे, विपक्षीगण को पाबन्द किया जाता है कि उक्त जुर्माना राशि "न्याय निर्णयन अधिकारी, एवं अतिरिक्त जिला मजिस्ट्रेट, राजसमन्द के नाम जरिये डिमाण्ड ड्राफ्ट अथवा चालान से निर्णय दिनांक से एक माह की अवधि में राजकोष में आवश्यक रूप से जमा करा पावती प्राप्त करें।

निर्णय आज दिनांक 25.01.2023 को खुले न्यायालय सुनाया जाकर, टकिंत कर शामिल पत्रावली किया गया। पत्रा0 फैसल शुमार होकर दाखिल दफ्तर रहे। निर्णय की प्रति संबंधित को नियमानुसार पालनार्थ प्रेषित है।



(रामचंद्र शर्मा) 25/01/23

न्याय निर्णयन अधिकारी एवं  
अतिरिक्त जिला मजिस्ट्रेट,  
राजसमन्द