प्र०सं० : 14 / 2023

न्यायालय न्यायनिर्णयन अधिकारी एवं अति०जिला मजिस्ट्रेट,राजसमन्द
(न्याय निर्णयन अधिकारी : श्री नरेश बुनकर, आर.ए.एस.)

प्रकरण संख्या :– 14 / 2023 (खाद्य सुरक्षा एवं मानक अधिनियम / नियम)
GCMS NO :– 2023 / 30
दायर दिनांक :– 24.02.2022
निर्णय दिनांक :– 26.05.2026

अनवान

1. राज्य सरकार जरिये श्री प्रेम चंद शर्मा, खाद्य सुरक्षा अधिकारी, कार्यालय मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी राजसमन्द (राज.)

– प्रार्थी

बनाम

1. श्री सुनिल कुमार लोढा पुत्र श्री भगवती लाल लोढा, उम्र 47 जाति जैन निवासी लोढा माहल्ला, वार्ड नं. 10 धोईन्दा, राजसमंद जिला राजसमंद (फर्म मालिक व विक्रेता) मैसर्स बोम्बे टी सेन्टर, सदर बाजार, बस स्टेण्ड के पास, कांकरोली जिला राजसमंद।
2. श्री भगवती लाल जैन पुत्र श्री गणेश लाल जैन मैसर्स भगवती जैन, फौज मोहल्ला, नाथद्वारा राजसमंद (राज.)
3. श्री नवीन चावला पुत्र श्री केशो राम चावला मैसर्स चावला सेल्स एजेन्सीज, जी–2, ग्लोब गोल्डन केरियर, जयपुर, राज.।
4. मैसर्स तलोड फूड प्रोडक्ट्स प्रा.लि. सर्वे न. 4, 10, माहीयल मजारा रोड, माहीयल तलोड, जिला सांबरकांठा, गुजरात–383215

– विपक्षी

खाद्य सुरक्षा एवं मानक अधिनियम 2006 व नियम एवं विनियम 2011

उपस्थितः–

1– श्री आशीष टांक, NSG ASSOCIATES, अधिवक्ता अविपक्षी संख्या 2 एवं 4
2– श्री सुनिल कुमार लोढा पुत्र श्री भगवती लाल लोढा, विपक्षी
3– अप्रार्थी / विपक्षी संख्या 3 अनुपस्थित (एकपक्षीय कार्यवाही)
4– श्री रमेश चन्द्र सैनी (हाल सेवनिवृत), खाद्य सुरक्षा अधिकारी, प्रार्थी

–: निर्णय :–

प्रकरण का संक्षिप्त विवरण इस प्रकार है कि राज्य सरकार द्वारा राजपत्र में प्रकाशित अधिसूचना दिनांक 13.03.2024 व 16.03.2024 के अनुसरण में **प्रेम चंद शर्मा**, खाद्य सुरक्षा

अधिकारी जो वाद में राज्य सरकार है। विपक्षी पर **मिसब्राण्डेड (Misbranded)** खाद्य सामग्री निर्माण एवं विक्रय हेतु परिवाद दायर कर अवगत कराया है श्री कमलेश चपलोत पुत्र श्री सुनिल कुमार लोढा पुत्र श्री भगवती लाल लोढा, उम्र 47 जाति जैन निवासी लोढा माहल्ला, वार्ड नं. 10 धोईन्दा, राजसमंद जिला राजसमंद (विक्रेता एवं फर्म मालिक) मैसर्स बोम्बे टी सेन्टर, सदर बाजार, बस स्टेण्ड के पास, कांकरोली जिला राजसमंद पर दिनांक 12.02.2025 को 01.00 पी. एम. वास्ते चेकिंग पहूंचे। **उक्त निरीक्षण के समय परिसर में** परिसर में खाद्य पदार्थ मूंग भूजिया आटा (तलोड) 500 ग्राम की पैकिंग के 10 पॉली पैकेट्स 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 मूंग भूजिया आटा (तलोड) 2 किलाग्राम (500–500 ग्राम के 4 पैकेट्स) खरीदे जिसकी कीमत विक्रेता को रु. 360 / – (तीन सौ साठ रूपये) नगद देकर रसीद प्राप्त की जिस पर विक्रेता, उपस्थित गवाह एवं खाद्य सुरक्षा अधिकारी के हस्ताक्षर किये गये। खाद्य सुरक्षा एवं मानक अधिनियम, 2006 व नियम, 2011 के अन्तर्गत खाद्य पदार्थ खाद्य पदार्थ मूंग भूजिया आटा (तलोड) के नमूने लिये गये, जिसकी सूचना विपक्षी को फार्म नम्बर 5 ए पर दी। प्रार्थी ने अपने आवेदन में उल्लेख किया कि खरीदशुदा खाद्य पदार्थ मूंग भूजिया आटा (तलोड) के 04 नमूना भाग तैयार किये चारों नमूना भागों हेतु 04 लेबल तैयार किये जिन पर विवरण आदि अंकित किया। चिपकाये गये नमूना भागो पर विपक्षी, गवाहों के हस्ताक्षर करवायें। सील कर अभिहित अधिकारी (खाद्य सुरक्षा) जिला राजसमन्द द्वारा जारी की गई पेपर स्लीप नम्बर AI-1475 नियमानुसार चारो नमूना सील्ड पर अंकित कर नमूने की सील्ड भागो को कब्जे में लिया।

एक सील बंद नमूना मय फार्म न. 06 की प्रति के खाद्य विश्लेषक जन स्वास्थ्य प्रयोगशाला उदयपुर को वास्ते जांच भेजा साथ में फार्म न. 06 की दो प्रति जिस पर 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 कमांक : एफएसएसए / 2022 / 656 दिनांक 08.03.2022 **के साथ खाद्य विश्लेषक उदयपुर से प्राप्त जांच रिर्पोट सं.** एल.एस. / 308 / एक्ट / 2022 / 308 दिनांक 04.03.2022 संलग्न कर विक्रेता व मुझे दी गई जिससे ज्ञात हुआ कि AI-1475 **खाद्य पदार्थ** मूंग भूजिया आटा (तलोड) का नमूना **मिसब्राण्डेड (Misbranded)** होना पाया गया जिसके आधार पर खाद्य सुरक्षा अधिकारी द्वारा सुनिल कुमार लोढा पुत्र श्री भगवती लाल लोढा, उम्र 47 जाति जैन निवासी लोढा माहल्ला, वार्ड नं. 10 धोईन्दा, राजसमंद जिला राजसमंद (फर्म मालिक व विक्रेता) मैसर्स बोम्बे टी सेन्टर, सदर बाजार, बस स्टेण्ड के पास, कांकरोली जिला राजसमंद को AI-1475 **खाद्य पदार्थ** मूंग भूजिया आटा (तलोड) **की जांच रिपोर्ट भिजवाई गई।** जिसके संबंध में विक्रेता

फर्म द्वारा मैसर्स भगवती जैन, फौज मोहल्ला, नाथद्वारा राजसमंद का इनवॉयस प्रस्तुत किया गया तत्पश्चात् मैसर्स भगवती जैन, फौज मोहल्ला, नाथद्वारा राजसमंद द्वारा मैसर्स चावला सेल्स एजेन्सीज का इनवॉयस प्रस्तुत किया गया तत्पश्चात मैसर्स चावला सेल्स एजेन्सीज द्वारा मैसर्स तलोड फूड प्रोडक्ट्स कर इनवॉयस प्रस्तुत किया गया। नमूने की मूल पत्रावली अभिहित अधिकारी को अभियोजन स्वीकृति हेतु प्रस्तुत किया। अभिहित अधिकारी एवं मुख्य चिकित्सा अधिकारी, राजसमन्द ने 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 क्षैत्र 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 प्रत्युतर प्रस्तुत करने का अवसर दिया गया। विपक्षी संख्या 2 द्वारा जरिए अधिवक्ता लिखित बहस पेश की गई की The Respondents are being prosecuted for alleged violation of Section (26)(2)(ii) of the Food Safety and Standard Act, 2006 (hereinafter referred to as "FSS Act") and punishable u/s-52 of the FSS Act. The Applicant's case as alleged in the Adjudication Application is that, the then appointed Food Safety Officer Sh. Ramesh Chandra Saini visited the premises of Respondent No. 1 on 24.02.2022 at 01:50 PM for inspection and, on suspicion as to quality of standard and misbranding, lifted a sample of "Moong Bhajiya Pakoda Mix Atta (Talod) 500 gm packing" (hereinafter referred to as "Sample") for analysis, and accordingly, issued Form VA to Respondent No. 1 present at the time of sampling. Thereafter, the sample was sent to the Food Analyst, Rajasthan (hereinafter referred to as "FA") who caused the testing of the sample in Public Health Laboratory, Udaipur (hereinafter referred to as "Food Laboratory"). The FA after conducting analysis of the sample vide its report No. LS 308/Act 2022/308 dated 04.03.2022 opined that "The sample of Mixed Flour (Talod Moong Bhajiya - Pakodi) Bearing code no. and serial no. AI-1475 of Designated Officer (Food Safety) Cum C.M.&H.O. of District Rajsamand is Misbranded food as protein value does not meet as per label declaration. The sample is misbranded food under section 3(1)(ZF)(A)(i)(a) of the Food Safety & Standards Act, 2006" That, consequently, the Applicant Food Safety Officer (hereinafter referred to as "FSO") sought sanction for prosecution from the Ld. Designated Officer, and that, the Ld. Designated Officer, Rajsamand vide its letter no. FSSA/2023/152 dated 10.01.2023 issued sanction to the FSO for prosecuting the Respondents in the present case, in Dines pursuance of which, the present Application for Adjudication of penalty u/s

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52 of the FSS Act came to be instituted before the Hon'ble Court by Applicant - FSO against the Respondents for the alleged contravention. The Respondent most respectfully states and submits that, for the following grounds/objections/reasons which are without prejudice to each other, the present Adjudication Application is not maintainable and liable to be dismissed in limine by this Ld. Court. For that, admittedly the Respondents are not the manufacturer of the sample and consequently not responsible/liable for the label declaration of the sample. Further, the Respondents has sold the food article in the same condition as it was purchased by them, hence, they are covered by guarantee of manufacturer regarding the nature and quality of sampled food product as provided under section 26(4) of FSSA. Therefore, the present Respondents are not liable for contravention of FSSA and Rules and Regulations made thereunder, if any, in view of Section 26(4) and 80(B)(2) (d) (i) of the FSSA. For ready reference Section 26(4) and 80(B)(2)(d)(i) of the FSSA is reproduced below: 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. Section 80- Defences which may or may not be allowed in prosecution under this Act; (B) Defence of due diligence Without limiting the ways in which a person may satisfy the requirements of clause (1), a person satisfies those requirements if it is proved - in the case of an offence involving the sale of food, that- the person sold the food in the same condition as and when the person purchased it; B. For that, allowing the instant application to continue against the Respondents 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. C. It is most humbly submitted that Manufacturer of the food sample i.e. Respondent No. 4 has filed a detailed reply to the instant Adjudication Application, the present Respondents crave leave of this Hon'ble Court to refer to and rely upon on the same and treat the same as part and parcel of this reply, the contents of which are not reproduced here for the sake of brevity and avoiding repetition. [12:22, 21/05/2026] Rti Rajsamand: D. For that, in present case the sampled food product was sold by present Respondents in the same condition in which they were received, and that, the Respondent had no reason to suspect the alleged contraventions. In light of these submissions and the facts of the case, the

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conditions of defense of due diligence under section 80(B) are satisfied and the Respondent is covered by Guarantee of Manufacturer as provided under section 26(4) of FSSA. Hence, the instant Adjudication Application is liable to be dismissed qua the present Respondent. (E) The present Respondent craves leave to add, alter the foregoing grounds and to cross examine the witnesses of the applicant and submitting its defense evidence. (F) The present Respondents, therefore, prays: a) That, this Hon'ble Court be pleased to dismiss the application and the entire proceedings; b) That, the Food Analyst be called for cross examination; c) That, the Respondents be allowed to cross examine all witnesses as mentioned by the Applicant in the adjudication application; d) That, the respondents be allowed to produce and examine defense witnesses. e) Pass such and further order/orders as this Learned Court may deem fit and proper in the interest of justice.

विपक्षी संख्या 4 द्वारा जरिए अधिवक्ता लिखित बहस पेश की गई की The present Respondent is engaged in manufacturing, processing, packing, supply and sale of a wide range of food products under trade name Talod®.The Respondent is being prosecuted for alleged violation of Section (26)(2)(ii) of the Food Safety and Standard Act, 2006 (hereinafter referred to as "FSS Act") and punishable u/s - 52 of the FSS Act. The Applicant's case as alleged in the Adjudication Application is that, the then appointed Food Safety Officer Sh. Ramesh Chandra Saini visited the premises of Respondent No. 1 on 24.02.2022 at 01:50 PM for inspection and, on suspicion as to quality of standard and misbranding, lifted a sample of "Moong Bhajiya Pakoda Mix Atta (Talod) 500 gm packing" (hereinafter referred to as "Sample") for analysis, and accordingly, issued Form VA to Respondent No. 1 present at the time of sampling. Thereafter, the sample was sent to the Food Analyst, Rajasthan (hereinafter referred to as "FA") who caused the testing of the sample in Public Health Laboratory, Udaipur (hereinafter referred to as "Food Laboratory"). The FA after conducting analysis of the sample vide its report No. LS 308/Act 2022/308 dated 04.03.2022 opined that "The sample of Mixed Flour (Talod Moong Bhajiya Pakodi) Bearing code no. and serial no. AI-1475 of Designated Officer (Food Safety) Cum C.M.&H.O. of District Rajsamand is Misbranded food as protein value does not meet as per label declaration. The sample is misbranded food under section 3(1)(ZF)(A)(i)(a) of the Food Safety & Standards Act, 2006" That, consequently, the Applicant Food Safety Officer (hereinafter referred to as "FSO") sought sanction for prosecution from the Ld. Designated Officer, and that, the Ld. Designated Officer, Rajsamand vide its letter no. FSSA/2023/152 dated 10.01.2023 issued sanction to the FSO for prosecuting the Respondents in the present case, in

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pursuance of which, the present Application for Adjudication of penalty u/s 52 of the FSS Act came to be instituted before the Hon'ble Court by Applicant FSO against the Respondents for the alleged contravention.The Respondent most respectfully states and submits that, for the following grounds/objections/reasons which are without prejudice to each other, the present Adjudication Application is not maintainable and liable to be dismissed in limine by this Ld. Court. For that, in the present case the alleged offence, if any, has been committed by the Company which is represented by its Nominee / authorised representative who is also vicariously liable for the alleged offence. However, the present Respondent has been impleaded without impleading its Nominee. Section 66 of the FSSA is reproduced below for ready reference:

Section 66 - Offences by Companies;

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in charge of such establishment, branch, unit nominated by the Company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit : Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in the foregoing sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against the punished accordingly. Thus, it is amply clear from the plain reading of Section 66(1) of the FSSA that when an offence is committed by a company then the Nominee appointed by the company under the Act or in case of no Nominee has been appointed then the person in charge and responsible for the day to day affairs of the company shall be prosecuted along with the company. The principal of vicarious liability is not maintainable against the present Respondent, only, when

its Nominee has not been made a party. It is most humbly submitted that, in view of, specific prescription of law under section 66 of the Food Safety and Standards Act, 2006; and, settled law, in the absence of Company, nominated person cannot be convicted or vice versa. As such, the present Respondent being a Company cannot be convicted without impleading its nominated person for the alleged offence. Reliance is placed on the Judgment of Apex Court in the matter of Hindustan Unilever Limited Vs. State of Madhya Pradesh; CRIMINAL APPEAL NO. 715 OF 2020. B. For that, Respondent is a Food Business Operator under the FSS Act, in view thereof, they have a statutory right to get the fourth part of the sample analyzed by an accredited laboratory under Section 47(1)(c)(iii) of FSSA and Rule 2.4.1 [10(iii)] and Rule 2.4.5(1) of FSSR. Further, in order to safeguard the interest and to avoid any prejudice to the Food Business Operator, the law as a second check has further granted statutory right to Food Business Operator under Section 46(4) of FSS Act and under Rule 2.4.6(1) of FSS Rules to get the 2nd part of the sample analyzed by a Referral Food Laboratory (whose report is final and supersedes the report of the Food Analyst). the second part of the sample analysed by Referral sampling nor report of FA with an opportunity to get It is pertinent to mention here that, neither FORM VA (Intimation of sampling to Food Business Operator) drawn by Applicant FSO at the time of Food Laboratory, was ever served to the present Respondent. There is no acknowledgement on record, as well, to show that the above intimation; and, report of FA with an opportunity of retesting was served to the present Respondent. In view of the above, the present Respondent has been deprived of both of its Statutory Rights i.e. A) to get the fourth part of the sample analyzed by an accredited laboratory; and, B) to get the 2nd part of the sample analyzed by a Referral Food Laboratory (whose report is final and supersedes the report of the Food Analyst). Hence, the entire proceedings stands vitiated for being patently illegal, and therefore, liable to be dismissed and set aside, summarily on this score alone. Respondent places reliance on the judgment of Hon'ble Supreme Court in the matter of APPEAL NO.1167 OF 2019 (Arising out of S.L.P. (Criminal) No.4314 of 2015) Vijendra Versus State of Uttar Pradesh decided on 31" July 2019, wherein, the Hon'ble Apex Court has held that mere dispatch of report is not sufficient, proof of delivery is mandatory. C. For that, in terms of section 3(1)(p) and section 43(1) of FSS Act, 2006 a food laboratory is required to fulfil Diner two basic criterion to be eligible to test the food samples drawn under section 47 of the FSS Act, 2006. First, such food laboratory must have NABL Accreditation, and, second, such food laboratory must be recognized and notified by FSSAI. As per the accreditation granted to the Food Laboratory wherein

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the sample was tested, testing of Proprietary Food for the alleged parameter of Protein content is beyond the scope of NABL Accreditation of the said laboratory. In view thereof, the report of food analyst is not reliable for having been without authority and competence, and therefore, entire proceedings emanating from the report of FA are liable to be dismissed and set aside. Copy of scope of NABL accreditation of Public Health Laboratory, Udaipur is annexed herewith and marked as Annexure - A. The Respondent places reliance on the 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. wherein it was held that food samples could be sent for analysis by the Food Analyst only in those laboratories which are accredited by NABL and recognized & notified by the Food Authority. [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 5/7/2011 even the State and Central Laboratories, though not notified, were entitled to test the samples, is incorrect. He Respondent further places reliance on the Judgment passed by Division Bench of Hon'ble Bombay High Court (Civil Appellate Jurisdiction) in Writ Petition No. 3413 of 2022 with 3416 of 2022, 8003 of 2021 in the matter of M/s Pernod Ricard India Private Limited Vs. Food Safety and Standards Authority of India and Others, Decided September 23rd 2022 on "The food laboratory shall have the obligation to perform all tests in the approved premises as per the valid scope of recognition. The tests ought to be carried within the valid scope of recognition. "to all the" It would appear that the Executive Director of Food Safety and Standard Authority of India has issued letters on 15.03.2021 Commissioners of Food Safety of all States to the effect that the samples are being sent to the laboratories not capable of testing the product /parameter and he advised that the scope of testing of the laboratory may be checked, before sending any sample for analysis for any purpose under the various provisions of this Act, so as to ensure that the analysis reports are legally and technically valid. The Respondents could not demonstrate as to how the said

laboratory was competent to test and analyze the alcohol beverage." For that, without prejudice to the foregoing, it is most humbly submitted that, the sample so lifted for analysis was never tested by the FA, as evident from the record of the case. It is pertinent to mention here that, the following contradictions are apparent on the face of the record in the instant matter:

(i) Date of Packing of the sample recorded in Form No. VA is 12.10.2021, whereas, FA in its report has mentioned that Date of Packing of the sample was 07.01.2022;

(ii) Batch No. of the sample recorded in Form No. VA is 0912110, whereas, FA in its report has mentioned that Batch No. of the sample was 0971N;

(iii) Best Before Date recorded in Form No. VA is 12.05.2022, whereas, FA in its report has mentioned that Best Before Date of the sample was 07.08.2022;

In view of the above, it is clear that the sample tested by the FA is different from the sample lifted by FSO, and therefore, entire case of the prosecution is liable to be dismissed and set aside for being fraught with grave violations of provisions of sampling and analysis. E. For that, the sample passed all test for its standard of quality and declarations made on the package of the label when tested by the Manufacturer, and therefore, it is apprehended that the report of analysis of the sample issued by FA is erroneous. F. For that, the Hon'ble Apex Court and various High Courts in the Republic of India have from time to time settled the law that while granting sanction the authority concerned is required to apply mind on the facts of the case as also the relevant material while reaching to the conclusion as to whether prosecution has to be sanctioned or not. It is an obligation of the sanctioning authority to discharge his duty to give or withhold sanction only after having full knowledge of the material facts of the case. Sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent, though not a shield for the guilty. However, in the instant case, considering the foregoing, sanction for prosecution is arbitrary and without application of mind. In view thereof, Adjudication Application deserves to be dismissed and set aside. G. The present Respondent craves leave to add, alter the foregoing grounds and to cross examine the witnesses of the applicant and submitting its defense evidence.

A. The present Respondent, therefore, prays: (a) That, this Hon'ble Court be pleased to dismiss the application and the entire proceedings qua the Respondent; (b) That, the Food Analyst be called for cross examination; (c) That, the Respondent be allowed to cross examine all witnesses as mentioned by the Applicant in the adjudication application; (d) That, the Respondent be allowed to produce and examine defense witnesses. (e) Pass such and further order/orders as this Learned Court may deem fit and proper in the interest of justice.

विपक्षी संख्या 1 ने मौखिक रूप से निवेदन किया कि वह सदर बाजार, कांकरोली में एक छोटी सी दुकान (बोम्बे टी सेन्टर) चलाता है। वह उक्त खाद्य पदार्थ मूंग भुजिया आटा (तलोड) का निर्माता नहीं है, बल्कि केवल एक सामान्य खुदरा विक्रेता है जिसने मैसर्स भगवती जैन, नाथद्वारा से पक्के बिल (इन्वॉइस) के माध्यम से यह माल क्रय किया था ।

श्री रमेश चन्द्र सैनी (हाल सेवनिवृत) द्वारा मौखिक बहस में उल्लेख किया कि दिनांक 12.02.2022 को विधिक प्रक्रिया के तहत नमूना संकलित कर मौके पर ही चारों भागों को राजकीय पेपर स्लिप संख्या AI-1475 चस्पा कर सीलबंद किया गया था, जो जन स्वास्थ्य प्रयोगशाला, उदयपुर में रासायनिक विश्लेषण के समय तक पूरी तरह सुरक्षित व अक्षुण्ण पाई गई। विपक्षी निर्माता द्वारा फॉर्म 5–ए और लैब रिपोर्ट में अंकित बैच नंबर व पैकिंग तिथि में जो तकनीकी अंतर बताया गया है, वह मात्र एक मानवीय लिपिकीय या टंकण त्रुटि है, क्योंकि भौतिक सील संख्या AI-1475 का दोनों मुख्य विधिक दस्तावेजों में हुबहू एक समान मिलना यह अकाट्य रूप से प्रमाणित करता है कि प्रयोगशाला द्वारा उसी वास्तविक नमूने की जांच की गई है जो मौके से जब्त किया गया था। प्रयोगशाला द्वारा जारी जांच रिपोर्ट को नियमानुसार निर्माता कंपनी के पंजीकृत पते पर समय पर प्रेषित कर दिया गया था, जिसकी डाक रसीदें पत्रावली पर मौजूद हैं अतः पुनः परीक्षण के अधिकार से वंचित करने का प्रतिवादी का आक्षेप पूर्णतः निराधार है। मुख्य अपराध के संबंध में निर्माता कंपनी द्वारा उत्पाद के पैकेट पर उपभोक्ताओं को आकर्षित करने हेतु प्रोटीन की मात्रा 26.07 ग्राम घोषित की गई थी, जबकि वास्तविक प्रयोगशाला विश्लेषण में यह मात्र 24.02 ग्राम पाई गई, जो सीधे तौर पर भ्रामक प्रचार कर जनता को गुमराह करने का कृत्य है और अधिनियम की धारा 3(1)(f) के तहत स्पष्ट रूप से मिसब्रांडेड खाद्य की श्रेणी में आता है।

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 क्षैत्र 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 प्रत्युतर प्रस्तुत करने का अवसर दिया गया।

पत्रावली पर उपलब्ध समस्त दस्तावेजी साक्ष्यों, राजकीय विश्लेषक की रिपोर्ट तथा दोनों पक्षों की ओर से प्रस्तुत लिखित व मौखिक बहस का अवलोकन किया। खाद्य सुरक्षा और मानक अधिनियम, 2006 की धारा 52 के उल्लंघन का दोषी पाते हुए विधिक प्रकरण में चूंकि विपक्षी का **खाद्य पदार्थ** मूंग भूजिया आटा (तलोड) **मिसब्राण्डेड (Misbranded)** होना पाया गया। अतः अभियुक्त ने **मिसब्राण्डेड (Misbranded)** (खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 3(1)(zx) **खाद्य पदार्थ** मूंग भूजिया आटा (तलोड) 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 52 में जुर्माने योग्य अपराध है।

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न्यायालय द्वारा पत्रावली पर उपलब्ध समस्त दस्तावेजी साक्ष्यों, राजकीय विश्लेषक की रिपोर्ट तथा दोनों पक्षों की ओर से प्रस्तुत लिखित व मौखिक बहस का अवलोकन किया। खाद्य सुरक्षा और मानक अधिनियम, 2006 की धारा 52 के उल्लंघन का दोषी पाते हुए विधिक प्रकरण में चूंकि विपक्षी का खाद्य पदार्थ मूंग भूजिया आटा (तलोड) मिसब्राण्डेड (Misbranded) होना पाया गया। अतः अभियुक्त ने मिसब्राण्डेड (Misbranded) (खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 3(1)(f) खाद्य पदार्थ मूंग भूजिया आटा (तलोड) 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 52 में जुर्माने योग्य अपराध है। इसके अतिरिक्त, विपक्षी संख्या 3 (वितरक) द्वारा वैध तामीली के बावजूद न्यायालय के आदेशों की अवहेलना कर अनुपस्थित रहना उनकी घोर प्रशासनिक लापरवाही को साबित करता है।

अतः अपराध कारित होने से खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 68 के अंर्तगत प्रदत्त शक्तियों का प्रयोग करते हुए, **विपक्षी संख्या 4 (मैसर्स तलोड फूड प्रोडक्ट्स तलोड गृह उद्योग, गुजरात) पर उपभोक्ताओं को गुमराह करने और मिसब्रांडेड खाद्य पदार्थ का निर्माण करने के अपराध स्वरूप 75,000 /– (अक्षरे पचहत्तर हजार रुपये मात्र), वितरक विपक्षी संख्या 3 (मैसर्स चावला सेल्स एजेन्सीज) को मिसब्रांडिंग खाद्य पदार्थ का व्यावसायिक भण्डारण, न्यायालय के आदेश की पालना न करने एव गैर–हाजिर रहने के अपराध स्वरूप पर एकपक्षीय (ex-party) रूप से कार्यवाही करते हुए रुपये 75,000 /– (अक्षरे पचहत्तर हजार रुपये मात्र) की आर्थिक शास्ति अधिरोपित की जाती है, विपक्षी संख्या 2 (मैसर्स भगवती जैन, नाथद्वारा) पर खाद्य पदार्थ का व्यावसायिक भण्डारण रुपये रुपये 30,000/– (अक्षरे तीस हजार रुपये मात्र) तथा खुदरा विक्रेता विपक्षी संख्या 1 (श्री कमलेश चपलोत, मैसर्स बोम्बे टी सेन्टर, काँकरोली) पर 20,000/– (अक्षरे बीस हजार रुपये मात्र)** की शास्ति अधिरोपित कि जाती 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 उल्लद्यन नहीं करे, विपक्षीगणों को पाबन्द किया जाता है कि उक्त जुर्माना राशि "चालान द्वारा आयुक्तालय खाद्य सुरक्षा एवं औषधि नियंत्रण के राजस्व मद में फैसल दिनांक से एक माह की अवधि में आवश्यक रूप से जमा करा पावती प्राप्त करें। नियत अवधि में शास्ति राशि जमा न कराने की स्थिति में, अधिनियम की धारा 96 के प्रावधानों के अनुसार इसे भू–राजस्व की बकाया की भांति वसूल किया जाएगा एवं जुर्माना जमा होने तक विपक्षी का लाइसेंस निलंबित माना जाएगा।

निर्णय आज दिनांक 26.05.2026 को खुले न्यायालय सुनाया जाकर, टकिंत कर शामिल पत्रावली किया गया। पत्रावली फैसल शुमार होकर दाखिल दफ्तर रहे। निर्णय की प्रति संबंधित को नियमानुसार पालनार्थ प्रेषित है।

26/05/2026

(नरेश बुनकर)

न्याय निर्णयन अधिकारी एवं

अतिरिक्त जिला मजिस्ट्रेट,

राजसमन्द

न्याय निर्णयन अधिकारी एवं अतिरिक्त जिला मजिस्ट्रेट राजसमन्द