

न्यायालय : न्यायनिर्णयन अधिकारी एवं अति० जिला मजिस्ट्रेट (प्रशासन) श्रीगंगानगर
पीठासीन अधिकारी : भवानी सिंह पंवार, आर.ए.एस.
न्याय निर्णयन आवेदन सं० ६५/2018

श्री विनोद कुमार शर्मा, खाद्य सुरक्षा अधिकारी, कार्यालय अभिहित अधिकारी, (खाद्य सुरक्षा)
एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, श्रीगंगानगर

बनाम

1. जितेन्द्र सिंह कोचर पुत्र मनजीत सिंह कोचर – मालिक एवं खाद्य कारोबारकर्ता-
मै० कोचर मार्ट, 4-बी, रविन्द्रपथ, श्रीगंगानगर, जिला श्रीगंगानगर
निवासी :- 53 एच-ब्लॉक, श्रीगंगानगर।
2. संजय अग्रवाल, –मालिक सप्लायर-
दुर्गा मार्केटिंग, ए-7 बरसी सीतारामपुरा, पानी पेंच त्रिराहा, मैन झोटावावडा रोड
जयपुर 302021
एच-58 बी, जखेश्वर मार्ग, बनीपार्क जयपुर।
3. चन्द्रशेखर गुदारू पुत्र विजय भास्कर नायडू –नोमिनी निर्माता फर्म –
मैसर्स:- Hershey India Pvt. Ltd, chemtex houses, hiranadani Gardens Powwal. Greater Mumbai
Maharashtra 400076
4. जरिये चन्द्रशेखर गुदारू पुत्र विजय भास्कर नायडू –निर्माता फर्म-
मैसर्स :- Hershey India Pvt. Ltd, chemtex houses, hiranadani Gardens Powwal. Greater
Mumbai Maharashtra 400076

आद्युक्ता :- श्री गुरमीत कर्नर अग्रवाल

अभियुक्त

एफ.एफ.एस.ए.2006 की धारा 26 उप धारा 2(ii) का उल्लंघन एवं
धारा 51 एवं 52 के तहत

निर्णय

दिनांक : 10.03.2021

सक्षेप में प्रकरण के तथ्य इस प्रकार हैं कि खाद्य सुरक्षा अधिकारी श्री विनोद कुमार शर्मा दिनांक 28.10.2016 से कार्यालय अभिहित अधिकारी, (खाद्य सुरक्षा) एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, श्रीगंगानगर का कार्य सम्पादन कर रहे हैं। राज्य सरकार द्वारा राजपत्र में प्रकाशित गजट नोटिफिकेशन के अनुसार खाद्य सुरक्षा अधिकारी, नियुक्त किया गया है। आयुक्त, खाद्य सुरक्षा एवं निदेशक (जन स्वा.) चिकित्सा एवं स्वास्थ्य सेवायें राजस्थान जयपुर के आदेश दिनांक 28.09.2016 के अनुसार उन्हें कार्य क्षेत्र मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, श्रीगंगानगर आवंटित किया गया है। श्रीगंगानगर कार्यालय के अन्तर्गत आने वाले समस्त स्थानीय क्षेत्र उनके कार्य क्षेत्र में बताये हैं।

श्री विनोद शर्मा, खाद्य सुरक्षा अधिकारी दिनांक 04.08.2017 को दोपहर बाद 5.30 पीएम फर्म मै० कोचर मार्ट, 4-बी, रविन्द्र पथ, श्रीगंगानगर पर पहुंचा। उपस्थित व्यक्ति को

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अपना परिचय दिया तथा परिचय लिया परिचय लेने पर मालूम हुआ कि वह व्यक्ति जितेन्द्र सिंह ह कोच पुत्र श्री मनजीतसिंह कोचर उमत्र 55, जाति अरोडासिंह, निवासी 53 एच ब्लॉक, श्रीगंगानगर है, एवं फर्म मै0 कोचर मार्ट, 4-बी, रविन्द्रपथ, श्रीगंगानगर पर खाद्य कारोबारकर्ता एवं मालिक की हैसियत से मौजूद है एवं आम जनता को सोया मिल्क (Proprietary Food Sofit Brand) बेचता है।

आवेदक खाद्य सुरक्षा अधिकारी ने निरीक्षण करने के दौरान आम जनता के उपयोग आने वाले खाद्य पदार्थ सोया मिल्क (Sofit Brand) के अमानक होने का शक होने पर खाद्य सुरक्षा एवं मानक अधिनियम 2006 के तहत, जांच हेतु नमूना लेने की इच्छा जाहिर की, दुकान में अलमारी की रैक में बिकी हेतु मौजूद सोया मिल्क (Sofit Brand) 12x1 लि. पैकड पैकेटो में से 4x1 लि. पैकड पैकेटो प्रोपाईटरी फूड सोया मिल्क (Sofit Brand) की कीमत 480 रु. अदा की एवं खरीद रसीद तैयार की, फार्म संख्या 5ए तैयार किया, खाद्य कारोबार कर्ता, गवाहों के हस्ताक्षर करवाये एवं स्वयं मैने भी अपने हस्ताक्षर किये। फार्म संख्या 5ए की एक प्रति खाद्य कारोबार कर्ता को देकर रसीद प्राप्त की। मूल नमूना खरीद रसीद, मूल फार्म V ए, न्याय निर्णयन आवेदन के साथ सलंग्न है।

आवेदक खाद्य सुरक्षा अधिकारी ने लेबल पर कोड एवं सीरियल नम्बर दिनांक, स्थान खद्य पदार्थ का नाम आदि अंकित कर उस पर खाद्य कारोबारकर्ता, गवाहों के हस्ताक्षर कराए एवं स्वयं खाद्य सुरक्षा अधिकारी ने अपने हस्ताक्षर किए। तत्पश्चात चारों नमूना बोतलों पर एक-एक लेबल गोंद से चिपकाया, तत्पश्चात खरीद शुदा सोया मिल्क (Proprietary Food Sofit Brand) की पैकड चारो नमूना भागों को अलग-अलग खाकी कागज में लपेट कर प्रत्येक भाग पर डी.ओ.कम सी.एम. एच.ओ. श्रीगंगानगर के हस्ताक्षरयुक्त पेपर स्लिप **K-812** को नियमानुसार नीचे से ऊपर गोंद से चिपकाया, प्रत्येक भाग को धागे से बांध कर नियमानुसार सील चपड़ी किया। प्रत्येक नमूना भाग पर खाद्य कारोबारकर्ता के हस्ताक्षर व गवाहों के हस्ताक्षर करवाए एवं स्वयं मैने भी अपने हस्ताक्षर किये, चारों नमूना भागों को अपने जाप्ते में लिया। आवेदक खाद्य सुरक्षा अधिकारी ने फर्द रिपोर्ट तैयार की जिसे खाद्य कारोबारकर्ता जितेन्द्र सिंह कोचर ने पढ़कर सुनकर, समझ कर सही मानकर हस्ताक्षर किये। फर्द रिपोर्ट पर नमूने को सील करते समय काम में ली गई सील की छाप लगाई, मूल मौका फर्द रिपोर्ट सलंग्न है। आवेदक खाद्य सुरक्षा अधिकारी ने कार्यालय पहुंच कर फार्म VI की 8 प्रतियां तैयार की उस पर नमूने को सील करते समय काम में ली गई सील की छाप अंकित की, नमूना के चारों भागों के साथ फार्म VI की एक एक प्रति लगाकर नमूने के चारों भागों प्रत्येक को अलग-अलग आउटर कवर में बंद किया, मोटे मजबूत धागे से बान्धा, ऊपर नीचे, आजूबाजू, सील चपड़ी किया तथा फार्म 6 की दो-दो प्रतियां दो लिफाफों में अलग-अलग बन्द कर गोंद से चिपकाई नमूने के चारों भागों एवं लिफाफों को सील चपड़ी किया।

आवेदक खाद्य सुरक्षा अधिकारी ने दिनांक 08.08.2017 को नमूने का एक भाग एवं फार्म नम्बर 6 का एक सील बन्द लिफाफा शेर सिंह डीईओ कार्यालय मु.चि. एवं स्वा. अधिकारी श्रीगंगानगर द्वारा खाद्य विश्लेषक जयपुर को जमा करवाकर रसीद प्राप्त की


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तथा दिनांक 08.08.2017 को शेष तीन सील बन्द नमूना भाग मय फार्म नम्बर 6 का सील बन्द लिफाफा डी.ओ.एम. कम सी.एम.एच.ओ. श्रीगंगानगर को स्वयं ने जमा करवाकर रसीद प्राप्त की। आवेदक खाद्य सुरक्षा अधिकारी को अभिहित अधिकारी कम मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी श्रीगंगानगर द्वारा खाद्य पदार्थ सोया मिल्क (Proprietary Food Sofit Brand) की जांच रिपोर्ट प्राप्त हुई, प्राप्त जांच रिपोर्ट के अनुसार खाद्य कारोबार कर्ता जितेन्द्र सिंह कोचर से जांच हेतु लिया गया खाद्य पदार्थ सोया मिल्क (Proprietary Food Sofit Brand) का नमूना **K-812** अमानक खाद्य **SUBSTANDARD** व **Mis Brand Food** पाया गया। खाद्य कारोबारकर्ता जितेन्द्र सिंह कोचर एवं निर्माता फर्म को भी जांच रिपोर्ट की प्रति भिजवाई गई एवं जांच से असंतुष्ट होने की स्थिति में पुनः जांच का आवेदन फार्म 8, में रिपोर्ट प्राप्ति से 30 दिन में प्रस्तुत करने हेतु कहा गया। जितेन्द्र सिंह कोचर एवं निर्माता फर्म पुनः जांच का आवेदन प्रस्तुत नहीं किया। आयुक्त खाद्य सुरक्षा एवं निदेशक (जन स्वा.) चिकित्सा एवं स्वास्थ्य सेवाएँ राज. जयपुर से प्रकरण में एफएसएसए 2006 की धारा 77 सम्बन्धी कार्यवाही पूर्ण करवा ली गई है।

फूड एनालिस्ट राजस्थान जयपुर द्वारा जारी जांच रिपोर्ट क्रमांक:-एलएस/1769/एक्ट/2017/1841 दिनांक 23.08.2017 नमूना कमांक **K-812** सोया मिल्क (Proprietary Food Sofit Brand) **SUBSTANDARD** व **Mis Brand Food** होना पाया गया है। इस पर अभिहित अधिकारी कम मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, श्रीगंगानगर ने प्रकरण में अभियुक्त जितेन्द्र सिंह कोचर पुत्र मनजीत सिंह कोचर वगैरा द्वारा अमानक स्तर (Proprietary Food Sofit Brand) एफ.एफ.एस.ए.2006 की धारा 26 उप धारा 2(ii) व धारा 51 एवं 52 के अन्तर्गत न्याय निर्णयन आवेदन दिनांक 27.11.2018 को प्रस्तुत किया गया।

परिवाद पेश होने पर दर्ज रजिस्टर किया गया। अभियुक्त को तलब किया गया। अभियुक्त को परिवाद की प्रति उपलब्ध कराई गई।

अप्रार्थीगण के अधिवक्ता ने प्रारम्भिक आपत्तियों में कथन किया है :-

- 1- It is humbly submisted at the outset that the Defendants are dealing with only those averments, allegations, contentions and imputations against Defendants that are material and relevant for the purpose of adjudication of the captioned dispute. It is further set forth that all the allegations, averments,contentions and imputationsj raised by the Complainant in the instant complaint against the Defendants are based on conjecture and surmises hence disputed and denied entirely, save what is a matter of record or expressly admitted hereunder.
- 2- That it is most humbly and respectfully submitted that the instant complaint is wholly misconceived and is liable to be rejected at the threshold on the following amongst other grounds which are taken without prejudice to each other and to the paragraph wise replies.
- 3- That M/s Hershey's India Private Limited/ Defendant No.4 herein, is engaged in the business of manu;facturing chocolate and sugar confectionaries in addition to ready

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to serve beverages and is the manufacturer and marketer of "Soya Milk Chocolate (Sofit) (hereinafter referred to as "the said product") and Sh. Chandra Sekhar Gudar/ **Defendant No.3** herein is the DGM-QA & FSSA Nominee of M/s Hershey India Private Limited appointed under 2.5.1 of the Food Safety and Standards Rules, 2011 who is responsible to the Defendant No.4 for the conduct of the business all across the country. **Defendant No.1** herein is the retailer and **Defendant No.2** is the distributor of the impugned product. The defendant no. 1,2,3 & 4 shall herein after jointly be known as **Defendants**. Copy of the form of nomination and Board of resolution appointing Chandrasekhar Gudar as the Nomine of the M/s Hershey's India Private Limited is attached here with and marked as **Annexure-1**

- 4- That the instant complaint under reply arises out of the report bearing no. L.S/1769/Act/2017/1841 dated 23.08.2017 of the Food Analyst, Shri. Saudan Singh Chaudhary (hereinafter referred to as the "**Food Analyst**"), against the said product bearing batch no.HM0096H & sample no.K-812, received from Shri. Vinod Kumar Sharma, Food Safety Officer/ Complainant, Shree Ganganagar (hereinafter referred to as the "**the FSO**"). Copy of the Food Analyst Report bearing no. L.S/1769/Act/2017/1841 dated 23.08.2017 is attached here with and marked as **Annexure-2**.
- 5- That the complaint against the Defendants is not maintainable as the Complaint filed by the Food Safety Officer is misplaced, baseless and is a sheer abuse of the process of Law. The Complaint under reply lacks merits and is patently untenable and therefore deserves to be out rightly dismissed on the ground that the Food Analyst is wrong in stating in the Food Analysis Report dated 23.08.17 that the said product is sub-standard with in the definition provided under the Food Safety and Standards Act,2006 (herein after known as the "**FSS Act**") as the impugned product is a proprietary food which has not been standardized as defined under 2.12.1 of the Food Safety & Standards (Food Product Standards and Food Additives) Regulation, 2011 (hereinafter referred to as "**the Food Additives Regulation, 2011**") produced as under:

For the purpose of these regulations,-

- (1) Proprietary food means an article of food that has not been standardized under these regulations, but does not include novel foods, for special dietary uses, foods for special medical purposes, functional foods, nutraceuticals, health supplements and such other food articles which the Central Government may notify in this behalf. Provided that any deviation in quality parameters of a standardized food, as specified in the Food Safety and Standards Regulations made under the Food Safety and Standards Act, 2006 shall not qualify the resultant product as a proprietary food.

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That since proprietary food has not been standardized under the abovementioned regulations, the product for which the sample was taken by the FSO cannot be termed as a sub-standards food within the definition of 3(1)(zx) of the FSS Act which reads as under;

"Sub- standard" an article of food shall be deemed to be sub- standard if it does not meet the specified standards but not so as to render the article of food unsafe"

Therefore, as there are no specific standards that needs to be met under the FSS Act or its Rules & Regulations thereunder hence the complaint is liable to be set aside.

6- That the complaint against the Defendants is also not maintainable because the Food Analyst Report mentioned above has also wrongly alleged that the said product is misbranded as it contravenes to 2.2.2(2)(b) of the FSS (Packaging and Labelling) Regulation, 2011. The above mentioned regulation specifies that the name of the ingredient used in the product shall be listed in the descending order. It is relevant to note that the label of the said product mentions all the ingredient used to manufacture the product in a descending order and by no stretch of imagination can it be concluded that there is contravention of 2.2.2(2)(b) of the FSS (Packaging and Labelling) Regulation, 2011. Hence, the complaint is packing of the said product bearing batch no. HM0096H & sample no.K-812 is attached herewith and marked as **Annexure-3.**

7- That the food analyst report to be prepared by the Food Analyst is provided under Regulation 2.3.1 (ii) of the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011 which specifies that the report of the food analyst shall be sent in Form B as prescribed . Form B requires the Food Analyst to document the basic upon which the opinion / interpretation have been made. However, the food Analyst has failed to provide any document on the basis of which the impugned product has been alleged to be "Substandard" or " Misbranded". Therefore, in the instant report the Food Analyst has not complied to the abovementioned Regulation and has merely alleged the impugned product as "Substandard" &"Misbranded Food". under the provisions of FSS Act without providing any document on the basis of which the opinion/interpretations have been made of the impugned product which is gross abuse of the process of law and hence the Complaint filed against the Defendants is liable to be dismissed as report of the Food Analyst on which the FSO , Shri Ganganagar has relied upon and filed the Complaint, Suffers from an inexcusable flaw.

8- Hence, the present complaint is false, frivolous, vexatious and sheer abuse of the process of law and is liable to be dismissed for the sake of lequity & natural justice. Without prejudice to the foregoing preliminary objections, paragraph wise reply is as under.

PARAWISE REPLY.

9- That the contents Paragraph No.1 is of record hence needs on reply.

10- That the contents of Paragraph No.2 & 3 describes the procedure followed by the FSO in taking sample of the product and hence needs on reply.

11- That the contents mentioned in para 4 to 7 needs on reply.


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12- That the contents of paragraph No.8 is false and vexatious and has not merit, hence denied. The Food Analyst is also wrong in stating in the Food Analysis Report dated 23.08.2017 that the said product is Sub-standard within the definition provided under the Food Safety and Standards Act, 2006 (herein after known as the "FSS Act") as proprietary food are those food which have not been standardized as defined under 2.12.1 of the Food Regulation, 2011 produced as under:

For the purpose of these regulations,-

(1) **Proprietary food means an article of food that has not been standardized under these regulations,** but does not include novel foods, foods for special dietary uses, foods for special medical purposes, functional foods, nutraceuticals, health supplements and such other food articles which the Central Government may notify in this behalf. Provided that any deviation in quality parameters of a standardized food, as specified in the Food Safety and Standards Regulations made under the Food Safety and Standards Act, 2006 shall not qualify the resultant product as a proprietary food.

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That therefore the opinion of the Food Analyst in the Food Analysis Report dated 23.08.2017 that the product is sub-standard food is contentious and vague on the ground that the fourth coulomb under the heading "**Results**" reads that the fat content in the product has been found to be 0.37% and is not 12.07% as per the label as mentioned in coulomb 5. Additionally, The term sub-standard food within the definition of 3(1) (zx) of the FSS Act which reads as under:

"Sub-standard" an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe"

Hence, as quoted hereinabove, since the product is a proprietary food, it has not been standardized and therefore cannot be sub-standard food.

Further, without prejudice to the reasons stated hereinabove, it is relevant to state that one serving of the impugned product when expressed in terms of volume is 200 ml and when expressed in terms of weight is 211 g. thus, the content of fat per 200 ml/211g is 4.15g which amounts to $(4.15g/211g * 100 = 1.98\%$ approx.) whereas according to the report of the Food analyst is declared as 2.07% of fat as per label. Hence, the Food Analysis Report is prima facie errant, false and baseless as the Food Analyst has erroneously calculated the percentage of fat content as declared on the label of the impugned product. Furthermore, the report of the Food analyst is also incredible, in so far as it concludes that the entire fat content of the impugned product is as low as 0.37%. It is to be enunciated that each yield/harvest of soya bean varies in the composition of fat and protein. Therefore the better yield may even have higher rate of fat and protein content. But in no circumstance can the fat content be as low as indicated in the Food Analyst's Report as Defendant No.4 uses the best quality of soya Milk to have such less content of fat. It can be further be verified by the UDSA National Nutrient Database for Standard Reference Report dated 07 December 2016


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which specifies that there is 1.99g of fat per 100g of standard Soya Milk which is 1.99% of fat content in a soya Milk. It is further relevant to note that the impugned product that the only other product that adds to the fat content cocoa powder/solids. Hence as declared on the label of the impugned product, cocoa powder/solids is 0.80% of the impugned product, thus every 211g of the impugned product has 1.6 g approx. of cocoa solids which will also comprise of 0.087% approx. fat contributed from cocoa solids/powder itself. Copy of the reports from USDA National Nutrient Database for Standard Reference dated 07.12.2016 on Soya Milk is attached herewith and marked as **Annexure 4**.

Additionally, it is pertinent to state that, the Defendant No.4 also performs a thorough internal analysis of each batch of Sofit Soya Milk before it is cleared for distribution for human consumption and the fat content found in our internal analysis process for the impugned product bearing batch no. HM0096711 & sample no. K-812 was found to be around 2.24%. Therefore, the Food Analyst Report is wrong and hence the Complaint is liable to be dismissed. Copy of the internal Analysis report dated 13.04.2017 is attached here with and marked as **Annexure 5**.

13- That the Food Analyst in the Food Analysis Report dated 23.08.2017 has also wrongly alleged that the said the product is misbranded in contravention to 2.2.2 (2)(b) of the FSS (Packaging and Labelling) Regulation, 2011 as the above mentioned section specifies that the name of the ingredient used in the product shall be listed in the descending order. It is relevant to note that the label of the said product had mentioned the ingredient used for the manufacturing of the product in a descending order which in no way contravention to 2.2.2(2)(b) of the FSS (Packaging and labelling) Regulation 2011 as the total amount of sugar content in the product as the closest Intertek report dated 09.02.2017 & 13.10.2017 which includes added sugar is 11.22% & 12.96% respectively. Intertek is a National Accreditation Board for Testing and Calibration Laboratories (NABL) as the same is also approved and relied upon by FSSAI for various testing of complex food products like health supplements and nutraceuticals and also during the import & export of food products. However, even for the sake of arguments if we assume the content of sugar to be as per the results found which 16% it is still lesser than that of purified Water and Soya bean amounting to 16.15%. Therefore the Defendants cannot in any manner be held liable for misbranding of the impugned product. Copy of the Intertek report dated 09.02.2016 & 13.10.2017 and notification by which Intertek is a National Accreditation Board for Testing and Calibration Laboratories is attached herewith and marked as **Annexure 6,7 & 8** respectively.

14- That the allegations put forth by the Complainant in Paragraph no.9 is false and baseless, hence denied. That the Defendants have acted in accordance with the FSS Act, its Rules and Regulations thereunder and thus cannot be held liable on baseless averments. As explained in the preceding para the product is neither Misbranded nor Substandard food within the definition of the FSS Act and therefore no complaint shall lie against the Defendants under Section 26 (2)(ii) read with section 51&52 of the FSS Act. It is however further clarified that Defendant No 1 & 2 should in any case be removed from the parties to the instant complaint as Defendant No.2 sold the impugned product to Defendant No.1 the same condition in which Defendant No.2 had purchased from Defendant No.4.


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- 15- That the content of Paragraph No.10 is denied and disputed in its entirety. It is reiterated that the product is neither "Misbranded" nor "Sub-standard" within the definition of the FSS Act, hence the Defendants are not liable to be held under section 26(2) r/w section 51 & 52 of the FSS Act and paragraph no. 11 & 12 be read as part & parcel against the aforementioned para as the same is not repeated for the sake of brevity.
 - 16- That the Complaint is liable to be dismissed as no cause of action ever arose in favour of the FSO and against the defendants as the product as explained in the preceding paras is neither misbranded nor Substandard and hence the Defendants are not liable to be held under section 26(2)(ii) r/w section 51 & 52 of the FSS Act and complaint be dismissed out rightly.
 - 17- That the complaint of FSO is misconceived, frivolous and is an afterthought to unnecessarily harass the Defendants.
 - 18- That, the Complaint is bad in law and hence liable to be dismissed.
 - 19- That, the Defendants are entitled for special costs from Complainant for being unnecessarily dragged in to false litigation by the instant Complaint.

PRAYER

Therefore In the light of abovementioned facts and circumstances, It is most humbly and respectfully prayed that this Hon'ble Court may graciously be please to:

- A- Dismiss the complaint bearing no.65 pf 2018 as being false, frivolous and sans any cause of action against the Defendant No.1,2,3 & 4 .
- B- Grant Exemplary costs in favour of the Defendants as against the Complainant.
- C- Pass any other and/ or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the matter.

परिवाद पर दोनों पक्षों को सुना गया।

राज पैरोकार ने अपनी बहस में बताया कि अभियुक्त से लिया गया सोया मिल्क (Proprietary Food Sofit Brand) का सैम्पल **K-812** जांच रिपोर्ट क्रमांक:-एलएस/1769/एक्ट/2017/1841 दिनांक 23.08.2017 द्वारा **MISBRANDED & SUBSTANDARD** पाया गया है। अतः अभियुक्त के खिलाफ खाद्य सुरक्षा एवं मानक अधिनियम 2006 की उप धारा 26(ii) एवं 51 व 52 के तहत जुर्माना योग्य अपराध साबित होता है। जिसमें अधिकतम 5,00,000 रुपये की शारित्त का प्रावधान है।

अधिवक्ता अप्रार्थी ने बहस में कथन किया कि :-

- 1- That the FSO , Sri ganganagar has filed a case seeking to impose a penalty on the Defendants under section 26(2)(ii) r/w section 51 & 52 of the Food Safety and Standards Act, 2006(hereinafter referred to as the "**FSS Act**") contending that "Sofit Soya Milk chocolate" bearing batch no. HM00967H & serial no.K-812 (hereinafter referred to as "**the impugned Product**") is Misbranded" under section 3(1)(zf)(c)(i) of the FSS Act r/w 2.2.2 (b) of the Food Safety & standards (Packaging and Labeling) Regulations, 2011 (hereinafter referred to as "**P & L Regulations**") and "Substandard" under 3(1)(zx) of the FSS Act due to less content of fat, which is gross abuse of the process of law with respect to which the defendants had filed


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their written statement against the Complaint which shall be read as part and parcel of the written arguments being filed herein.

Before advertng to the legal provisions, the factual matrix of the case is enunciated herein below for your better understanding.

Brief facts of the case:-

- 1- That the written argument is being filed on behalf of Defendant No.1,2,3 & 4.
- 2- That the FSO , Sri ganganagar picked up 1 litre x 4 sealed tetra packets of the impugned product as samples bearing batch no HM00967H & serial no.K-812 on 04.08.2017 at around 5:30 pm from " Kochar Mart" owned by the Defendant No.1
- 3- That the impugned products were packed accordingly and then sent to Saudan Singh Chaudhary, the Food Analyst, appointed under the Food Safety and Standards Act, 2006 for the State of Rajasthan.
- 4- That the Food Analysis Report dated 23.08.2017 bearing bearing no. L.S/1769/Act/ 2017/ 1841 of the Food Analyst, Shri Saudan Singh Chaudhary was received by Shri Vinod Kumar Sharma, Food Safety Officer, Shri ganganagar/ Complainant (hereinafter referred to as the " Complainant") in which it has been alleged that the food is "Misbranded" under Section 3(1)(zf)(c) (i) of the FSS Act r/w clause 2.2.2(b) of the P & L Regulations and "Substandard" Under 3(1)(zx)of the FSS Act due to less content of fat.

WRITEN ARGUMENTS

- 5- That at the outset it is humbly stated that, the Complaint filed by the Complainants against the Defendants is liable to be dismissed on the sole ground that the complaint under reply is misplaced, frivolous and sheer abuse of the process of law.The complainant has proceeded in a callous and negligent manner and has relied upon erroneous interpretation of applicable laws.
6. That the Food Analysis Report dated 23.08.2017 has also wrongly alleged that the said the product is misbranded in contranded in contravention to 2.2.2 (2)(b) of the P & L Regulation, as the said regulation requires that name of the ingredient used in the product shall be listed in the descending order. The relevant part of the Food Analyst Report dated 27-08-2017 showing the list of ingredients in a descending order is reproduced below for your easy reference: Thus as the total amount of sugar content in the product as the closest Intertek report dated 09.02.2017 & 13.10.2017 includes added sukgar which is 11.22% & 12.96% respectively whereas the content of Purified Water and Soybean is 16-15 % hence it is clear that the label of the said product had mentioned the ingredient used for the manufacturing of the product in a descending order which in no way contravenes the Regulation 2.2.2 (b) of the P & L Regulation. It shall also be noted that Intertek is an National Accreditation Board for Testing and calibration Laboratories (NABL) accredited laboratory and is also an approved Laboratory by the Food Safety and Standards Authority of India. The reports of NABL accredited laboratory are widely relied upon by FSSAI for various testing of complex food products like health supplements and nutraceuticals and also during the import & export from India of various Food products. Howeverm even for athe sake of arguments if we assume the content of sugar to be as per the results found in the Food Analyst Report is 16 % it is still lesser than that of purified Water and Soya bean content which is 16.15 % Therefore, the Defendants cannot in


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any manner be held liable for misbranding of the impugned product for violation of Regulation 2.2.2 2. (b) Hence, the complaint in so far as it relates to the allegation of Misbranding is liable to be dismissed out rightly on this ground alone.

7. Additionally, the food Analyst in their report dated 23-08-2017 has alleged that the test for added sugar in the impugned product amounts to 16 % whereas on having even an unpretentious glance of the label it is evidently clear that the label only declares the total sugar content amounting to 21g per 200ml/211gm of the impugned product and not just that of the "added sugar". Even otherwise, since the content of sugar is lessor than that of purified water and soybean, it has been listed next to purified water and soybean and is thus in descending order of its composition after Purified water and soybean and hence there is no violation of regulation 2.22 2.(b) of the P & L Regulation. Therefore, the food analyst report is wrong and in stating that the Impugned product is "Misbranded" under the FSS Act due to violation of Regulation 2.2.2 2.(b) of the FSS (Packaging and Labeling) Regulations, 2011.
- 8- That the complaint against the Defendants is not maintainable as the Complaint filed by the Food Safety Officer Shri ganganagar is misplaced, baseless and is a sheer abuse of the process of Law. The Complaint under reply lacks merits and is patently untenable and therefore deserves to be out rightly dismissed on the ground that the Food Analyst is wrong in stating in the Food Analysis Report dated 23.08.17 that the said product is sub-standard with in the definition provided under FSS Act as the impugned product is a "proprietary food" which has not been standardized as defined under 2.12.1 of the Food Safety & Standards (Food Product Standards and Food Additives) Regulation, 2011 (hereinafter referred to as "the Food Additives Regulation, 2011") produced as under:

For the purpose of these regulations,-

- (1) Proprietary food means an article of food that has not been standardized under these regulations, but does not include novel foods, for special dietary uses, foods for special medical purposes, functional foods, nutraceuticals, health supplements and such other food articles which the Central Government may notify in this behalf. Provided that any deviation in quality parameters of a standardized food, as specified in the Food Safety and Standards Regulations made under the Food Safety and Standards Act, 2006 shall not qualify the resultant product as a proprietary food.
- (2) -----
(3) -----
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From the bare perusal of the above mentioned provision it is clear that since proprietary food has not been standardized under the abovementioned regulations. Thus the opinion of the Food Analyst in the Food Analysis Report dated 23.08.2017 that the product is sub-substandard food is contentious and vague on the ground that the fourth coulomb under the heading "Results" reads that the fat content in the product has been found to


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be 0.37% and is not 12.07% as per the label as mentioned in coulomb 5. Additionally, The term sub-standard food within the definition of 3(1) (zx) of the FSS Act which reads as under:

"Sub-standard" an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not lso as to render the article of food unsafe"

Hence, as quoted hereinabove , since the product ;is a proprietary food, it has not been standardilzed and therefore cannot be sub- standard food.

Further, without parejudice to the reasons stated hereinabove, it is relevant to state that one serving of the impugned product when expressed in terms of volume is 200 ml and when expressed in terms of weight is 211 g. thus, the content of fat per 200 ml/211g is 4.15g which amounts to (4.15g/211g* 100= 1-98% approx.) whereas according to the report of the Food analyst is is kdeclared as 2.07% of fat as per label. Hence, the Food Analysis Report is prima facie erratile. false and baseless as the Food Analyst has erroneously calculated the percentage of fat content as declared on the label of the impugned product. Furthermore, the report of the Food analyst is also incredible, in so far as it concludes that the entire fat content of the impugned product is as low as 0-37% . It is to be enunciated that each yield/harvest of soya bean varies in the composition of fat and protein. Therefore the better yield may even have higher rate of fat and prorein content. But in no circumstance can the fat content be as low as indicated in the Food Analyst's Report as Defendant No.4 Makes all attempts to use the best quality of soya bean available for the manufacture of the impugned product and hence it is emphatically pointed out here that it is impossible for a product largely composed of Soya Milk to have such less content of fat. It can be further be verified by the UDSA National Nuktrientj Database for Standard Reference dated 07.12.2016 which specifies that there ;is 1.99g of fat per 100g of standard Soya Milk which is 1.99% of fat content in a soya Milk. It is further relevant to note that the impugned product that the only other product that adds to the fat content cocoa powder/solids. Hence as declared on the label of the impugned product, cocoa powder/solids is 0.80% of the impugned product, thus every 211g of the impugned product has 1.6 g approx. of cocoa solids which will also comprise of 0.087% approx. fat contributed from cocoa solids/powder only. Therefore, under no circumstances can it be concluded that the content of fat is as low as 0-37%. It is pertinent to note that the Food Analyst in their report did not find any other defect or deficiency in the impugned product and has merely alleged that the fat content is low. The doctrine of res ipsa loquitor dictates in these circumstances that the report of the Food Analyst suffers from inherent inconsistencies and cannot be relied upon.

9- That furthermore, the report to be prepared by the Food Analyst is provided under Regulation 2.3.1 (ii) of the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011 shall be sent in Form B as prescribed .which requires the concerned Food Analyst to document the basic upon which the opinion / interpretation has been made. However, the food Analyst has failed to provide any document on the basis of which the impugned product has been alleged to be "Substandard" or " Misbranded". Therefore, in the instant report the Food Analyst has not complied in substance or in form to the abovementioned Regulation and has merely alleged the impugned product as "Substandard" & "Misbranded Food". under the provisions of FSS Act without providing any document on the basis of which the


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opinion/interpretations have been arrived at by the Food Analyst which is gross abuse of the process of law and hence the Complaint filed against the Defendants is liable to be dismissed as report of the Food Analyst on which the Complainant has relied upon and filed the Complaint each Suffers from an inexcusable flaw.

10- Additionally, it is pertinent to state that, the Defendant No.4 also performs a thorough internal analysis of each batch of Sofit Soya Milk Chicikate before it is cleared for distribution for human consumption and the fat content found in the internal analysis of the impugned product by the Defendant No.4 bearing batch No. HM00967H & sample no. K-812 was found to be around 2.24%. In these circumstances the report of the Food Analyst Report is wrong and hence the Complaint is liable to be dismissed.

11- Additionally, it is pertinent to note that Food Analyst has not attached any document to show that the test of the impugned product has been conducted in a "Food Laboratory" as defined under section 3 (p) r/w section 43(1) of the FSS Act. As evident from the Food Analyst Report bearing no. L.S/1769/Act/ 2017/ 1841 the impugned product was analyzed in between 18-08-2017 to 23.08.2017 by the Food Analyst at the " State Central Public Health Laboratory, Jaipur "(Rajasthan)" which is required to be a food laboratory within the meaning of section 3(p)) r/w section 43(1) of the FSS Act. The food laboratory where the analysis of sample of the product is done has to be accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognized by the Food Authority or the Food Authority has to notify that the " State Central Public Health Laboratory, Jaipur "(Rajasthan)" where the Analysis of the impugned product has been conducted, as a laboratory fit for the purposes of carrying out Analysis of samples by the Food Analysts but it appears that the abovementioned laboratory has not been accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency. Hence the report of the Food Analyst cannot be taken into consideration as it suffers from inexcusable discrepancies and is a not a credible report which can be relied upon.

12- That it is reiterated that the product is not "Misbranded" under Regulation 2.2.2 2.(b) of the FSS (Packaging and Labeling) Regulation,2011 and being a proprietary food product cannot be termed as a Sub-standard Food within definition contained under section 3(1)(zx) the FSS Act as alleged by the food Analyst in their report. Therefore, the complaint is liable to be Dismissed as no cause of action ever arose in favour of the complainant and against the Defendants and therefore the Defendants are not liable to be held under Section 26(2)(ii) r/w section 51&52 of the FSS Act and compliant be dismissed out rightly.

पत्रावली एवं Food Analyst की दिनांक 23.08.2017 की रिपोर्ट का गहनता से अवलोकन किया। अभियुक्त द्वारा खाद्य सुरक्षा एवं मानक अधिनियम 2006 की धारा 26(ii) एवं 51 व 52 का उल्लंघन किया है। जिसका जुर्माना एफएसएसए 2006 की धारा 51 एवं 52 में वर्णित है। परन्तु अधिवक्ता अप्रार्थी द्वारा प्रस्तुत सूचि अनुसार " State Central Public Health Laboratory, Jaipur "(Rajasthan)" द्वारा जिस तारीख को सैम्पल की जांच की उस तारीख को " State Central Public Health Laboratory, Jaipur "(Rajasthan)"



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का लाईसैंस नवीनीकरण नहीं था जिससे सोया मिल्क (Proprietary Food Sofit Brand) का सैम्पल K-812 का सैम्पल जांच करने हेतु अधिकृत नहीं थी। फलस्वरूप खाद्य सुरक्षा अधिकारी, श्रीविनोद कुमार द्वारा भरा गया, सोया मिल्क (Proprietary Food Sofit Brand) का सैम्पल K-812 निरस्त किया जाता है। निर्णय की प्रति मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी को भेजी जावे।

निर्णय आज दिनांक 10.03.2021 को मेरे द्वारा लिखाया जाकर खुले न्यायालय में सुनाया गया।




(भवानी सिंह पंवार)
न्यायनिर्णयन अधिकारी एवं
अतिरिक्त जिला कलेक्टर (प्रशांत)
श्रीगंगानगर
श्रीगंगानगर।