



IN THE COURT OF SH. AJAY KUMAR, ADJUDICATING OFFICER/
ADDITIONAL DISTRICT MAGISTRATE
(SOUTH-EAST)

GOVT. OF NCT OF DELHI, OLD GARGI COLLEGE BUILDING LAJPAT
NAGAR-IV NEW DELHI-110024



No. 05/F.S.Cases/ADM/SE/2015/ 521-526

Dated: 20/11/15

IN THE MATTER OF :

Food Safety Officer
Department Of Food Safety, Govt. Of Nct Of Delhi,
A-20, Lawrence Road Indl. Area,
Delhi-110035.

..... Complainant

V/s

1. Sh. Manish Rana S/o Sh. Matbar Singh Rana , Flavours Italian Restaurant
(A unit of M/s Flavours of Itlay Restaurant and Resorts P Ltd., 49-54 C
Mool Chand Flyover Park, Ring Road, Defence Colony, New Delhi-24.
2. Sh. Tarsillo Nataloni S/o Sh. Domenico Nataloni, Flavours Italian Restaurant , 49-54 C
Mool Chand Flyover Park , Ring Road, Defence Colony , New Delhi-24.
3. M/s Flavours Italian Restaurant, 49-54 C Mool Chand Flyover Park, Ring Road, Defence
Colony, New Delhi-24.
4. Sh. Surinder Singh Ryait, M/s G.S Consumer Products P Ltd., Branch G-15, Shahpuri,
Tirath Singh Tower, C-58, Janakpuri, New Delhi-58.
5. M/s G.S Consumer Products P Ltd. Branch G-15, Shahpuri, Tirath Singh Tower, C-58,
Janakpuri, New Delhi-58.

ORDER

(Under Rule 3.1.1. of Food Safety & Standards Rules, 2011)

An application dated 8/8/2012 under Rules 3.1.1. (3) of FSS Rules, 2011 was filed in this court by the Food Safety Officer, Sh. V.P S Choudhary, Food Safety Officer for adjudication of the offence for violation of provisions of Section 26 (2) (ii) of Food Safety & Standards Act, 2006 which is punishable under section 51 of FSS Act and for violation of Regulation No. 2.2.2.4, 2.2.2.8, 2.2.2.9 and 2.2.2.10 of the Food Safety & Standard (Packaging & Labelling) Regulation, 2011, which is punishable under Section 52 of the Food Safety and Standard Act, 2006.

In this application, it was alleged that on 22.11.2011 the Food Safety Officer (Sh. VPS Choudhary) purchased a sample of "Pomace Olive Oil" an article of food for analysis from Sh. Manish Rana, Food Business Operator-Cum-proprietor of M/s Flavours Italian Restaurant Ltd..

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Sh Manish Rana FBO-Cum-Proprietor was found storing the said food article for sale for human consumption at the time of taking sample. The sample was taken as per the direction of the Designated Officer Sh. K.K Mittal. The sample of Pomace Olive Oil was lying in 4 sealed bottles of identical declaration. Before taking sample efforts were made to get the public witness to join the sample proceedings by the undersigned but none came forward then on my request Sh. S. Mehto, FA joined as a witness to the sample proceedings.

The each sample counter part was separately packed, fastened up and sealed according to FSS Act/Rules and regulations. Designated Officer's (DO) slip bearing the code number, signature and official stamp of the DO was Affixed on each sample counter part. A label was also pasted on each of the four sample counter parts and the FBO has signed all the four labels affixed on each of the sample counter parts that the signature of the FBO was also obtained on the DO slip in such a manner as it partly appeared on the slip and partly on the wrapper of the four sample counter parts.

On 23.11.2011 one counter part of the sample was sent to the Food Analyst, Delhi bearing D.O Code Number 08/DO-04/732 in intact condition in a sealed packet alongwith a copy of the Memo Form VI and another copy of memo Form VI in a separate sealed packet. The other two counter parts were deposited with DO in intact condition in a sealed packet alongwith two copies of memo form VI on 23.11.2011. Also on 23.11.2011 the fourth counter part of the sample was deposited with DO in a sealed packet alongwith a copy of memo form VI as at the time of taking sample the FBO did not make any request to FSO regarding one sample part to be sent to accredited Lab for testing U/s 47(1)(c)(iii). All the copies of Memo in Form VI were marked by the FSO with the impression of the seal which was used to seal the sample counter parts.

The Food Analyst analysed the sample and furnished report dated 5/12/2011 that the sample is substandard because acid value exceeds the prescribed minimum limit of 0.5. The same was also misbranded because there is violation of Regulation no. 2.2.2.4, 2.2.2.8, 2.2.2.9 and 2.2.2.10 of the Food Safety & Standard (Packaging & Labelling) Regulation, 2011.

Notice was issued to all the concerned parties and hearing was conducted on various dates. The respondent no. 4 & 5 submitted vide reply dated 15/11/2012 that Food Safety Officer has not complied with the provisions of Food Safety And Standards Act 2006 while taking the sample and sending it to Analyst. Hence, the complete process has been vitiated and became illegal, null and void. It is submitted that Food Safety Officer as well as Analyst have not complied with the provision of Cl. (5) of sec.47. It is submitted that according to Sec. 47 (5) of Food Safety And Standards Act 2006, in case of imported food articles, the authorized officer of food authority shall take its sample and send to the food Analyst of notified laboratory for analysis who shall send the report within a period of 5 days to the authorized officer. However, in present case the food safety officer even knowing that the sample is imported oil, he himself has taken sample and sent it to analyst without complying with Sec.47 (5) of Food Safety And Standards Act 2006, which vitiates the further process. Therefore, the allegations regarding substandard product are wrong and denied.

Aggarwal

The respondent no. 4 & 5 further mentioned that the allegations regarding misbranding are wrong and denied. It is specifically denied that there is any violation of regulation No.2.2.2.4, 2.2.2.8, 2.2.2.9 and 2.2.2.10 of food safety and standards regulation 2011 on alleged or at all. As per definition of Refined Olive Pomace Oil, which is a type of olive oil. It is a vegetarian product. Moreover the Regulation 2.2.2.4 applies to food products, which are defined in Sec. 3(j) of Food Safety And Standards Act 2006. The allegations regarding violation of regulation 2.2.2.8 are wrong and denied. It is submitted that label mentioned Lot No. which is evident from notice dt. 25.11.11 sent by Food Safety Officer to accused No.4. The said notice clearly mentions the Lot 13.10.2010. It is further submitted that company refers its date of packing as Lot number. Hence, the regulation 2.2.2.8 has not been violated as alleged or at all. The allegations regarding violations of regulations 2.2.2.9 are wrong and denied. It is submitted that Label mentioned date of packing as 13.10.2010. The date of packing and Lot No. are same as 13.10.2010, which has also been referred by Food Safety Officer in notice dt. 25.11.11. The allegations regarding violation of regulations 2.2.2.10 are wrong and denied. It is submitted that Label mentioned date of expiry as 13.04.2012. The date of expiry has also been referred by Food Safety Officer in its notice dt. 25.11.11.

F.S.O. submitted counter reply vide letter dated 22.02.2013 that Food Safety Officer is not the authorized officer of food authority i.e. Food Safety and Standards Authority of India so here Sec.47(5) of FSS Act 2006 is not attracted. The sample of Pomace Olive Oil is very much sub-standards in this case as per Food Analyst Report No. PFA/Enf/911/2011 dt. 05.12.2011. Regarding Para 2,3,4 and 5 it is submitted that the sample is mis-branded and there is violation of regulation No. 2.2.2.4, 2.2.2.8, 2.2.2.9 and 2.2.2.10 of Food Safety and Standards Regulation 2011. Further the every consumer/user is not aware the definition of refined Olive Pomace Oil as mentioned in regulation 2.2.1 (8). There is no green symbol on the product as required under FSS Regulation.

Respondent No. 4 & 5 submitted vide written argument dated 21.03.2013 that Food Safety Officer as well as Analyst have not complied with the provision of Cl. (5) of Sec.47. It is submitted that according to Sec. 47 (5) of Food Safety and Standards Act 2006, in case of imported food articles, the authorized officer of food authority shall take its sample and send to the food Analyst of notified laboratory for analysis who shall send the report within a period of 5 day to the authorized officer. But in present case the compliance of provisions of section 47 (5) was deliberately avoided. Moreover, the Food Safety Officer in its counter reply has admitted that Food Safety Officer is not the authorized officer of food authority which proves that the procedure prescribed by law for imported food articles has not been followed in the present case.

The respondent no. 4 & 5 further mentioned that the label of article in question mentioned Lot No. which is also evident from notice dt. 25.11.11 sent by Food Safety Officer to respondent No.4. The said notice clearly mentions the Lot 13.10.2010. It is further submitted that company refers its date of packing as Lot number. Hence, the regulation 2.2.2.8 has not been violated as alleged or at all. The label of article in question mentioned date of packing as

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13.10.2010. The date of packing and Lot No. are same as 13.10.2010, which has also been referred by Food Safety Officer in notice dt. 25.11.11. Hence, the regulation 2.2.2.9 has not been violated as alleged or at all. The label of article in question mentioned date of expiry as 13.04.2012. The date of expiry has also been referred by Food Safety Officer in its notice dt.25.11.11. Hence, the regulation 2.2.2.10 has not been violated as alleged or at all. As per definition or refined Olive Pomace Oil in regulation 2.2.1(8) olive oil means the oil expensed from fruit of olive tree. Hence, the regulation 2.2.2.4 has not been violated as alleged or at all. From the above facts it is very much clear that the regulations 2.2.2.8 2.2.2.9 2.2.2.10 of Food Safety and Standards Regulations 2011, have not been violated. The respondent no.4 & 5 took all reasonable precautions and exercised all due diligence.

During the hearing held on 12/9/2014, Sh. Ranjeet Singh, FSO present for petitioner. Sh. Sunil Kumar, Advocate present for respondent no. 4 & 5. The respondent submitted that on the matter of sub-standard quality of Olive oil, Section 47 clause 5 is applicable in this case and FSO was not authorized to lift sample for testing. However, on the matter of misbranding i.e. absence of "green colour" symbol on the sample, it is accepted and requested for lenient view.

The arguments in this matter has been heard. As per the findings of FSO or the applicant, it was found that Shri Manish Rana was FBO-Manager of the unit M/s Flavours of Italian Restaurant, Defence Colony, at the time of taking sample he looks after its day to day business and M/s Falvours Italian is a company having two Directors (1) Mrs. Marie Claire (2) Sh. Tarsilo Nataloni. Sh. Tarsilo Nataloni looks after day to day business of the Restaurant. The sample of the article is a product and it was imported into India by M/s G.S Consumer Products pvt. Ltd. Having registered office at G.S Estate, G.T Road Ludhaina-141010. And supplied to Flavours Italian Restaurant from its Delhi Branch located at F-15, Shahpuri Janakpuri, Delhi. G.S Consumer Products Pvt. Ltd. is a company having four directors namely 1. Jasbir Singh Ryait 2. Surinder Singh Ryait 3. Smt. Dalvinder Kaur Ryait 4. Amarjeet kaur Ryait.

A copy of the Food Analyst report was forwarded to the FBO on 2.3.2012 to FBO and to the company and importer for giving them an opportunity to file an appeal against the report of Food Analyst for sending one counter part of the sample to the Referral Food Lab. FBO, Sh. Manish Rana did not respond in person to the notice dated 2.3.2012. G. S Consumer Products Pvt Ltd the importer and supplier company vide letter dated 21.3.2012 stated that they are not interested in making an appeal against the report of Food Analyst for referring one counter part of the sample to the referral Food Laboratory.

During the course of argument, respondent no. 4 & 5 submitted that according to Sec. 47 (5) of Food Safety and Standards Act 2006, in case of imported food articles, the authorized officer of food authority shall take its sample and send to the food Analyst of notified laboratory for analysis who shall send the report within a period of 5 day to the authorized officer. But in present case the compliance of provisions of section 47 (5) was deliberately avoided. Moreover,

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the Food Safety Officer in its counter reply has admitted that Food Safety Officer is not the authorized officer of food authority which proves that the procedure prescribed by law for imported food articles has not been followed in the present case. The applicant could not provide any substantial proof or argument to rebut the arguments made by the respondents.

Further, respondent no. 4 & 5 submitted that company refers its date of packing as Lot number. Hence, the regulation 2.2.2.8 has not been violated as alleged or at all. The label of article in question mentioned date of packing as 13.10.2010. The date of packing and Lot No. are same as 13.10.2010, which has also been referred by Food Safety Officer in notice dt. 25.11.11. Hence, the regulation 2.2.2.9 has not been violated as alleged or at all. The label of article in question mentioned date of expiry as 13.04.2012. The date of expiry has also been referred by Food Safety Officer in its notice dt.25.11.11. Hence, the regulation 2.2.2.10 has not been violated as alleged or at all. As per definition or refined Olive Pomace Oil in regulation 2.2.1(8) olive oil means the oil expensed from fruit of olive tree. Hence, the regulation 2.2.2.4 has not been violated as alleged or at all. From the above facts it is very much clear that the regulations 2.2.2.8 2.2.2.9 2.2.2.10 of Food Safety and Standards Regulations 2011, have not been violated. However, on the matter of absence of "green colour" symbol on the sample, the mistake was accepted by the respondents no.4 & 5 and requested for lenient view.

From the above said facts and circumstances and documents placed on records, it could not be proved beyond doubt that the sample lifted by the applicant were as per the prescribed procedure and it did not violated section 47 (5) of Food Safety & Standards Act, 2006 and the food was tested as sub-standard by following the due procedure prescribed under the Act. Further, some of the components of mis-branding could not be proved beyond doubt by the applicant, however, the respondent no 4 & 5 accepted the mistake on the matter of absence of "green colour" symbol on the sample, which is also a case of misbranding due to violation of regulation no. 4 (iii) of Food Safety & Standards (packaging & Labelling) Regulations, 2011, and requested for lenient view. It was also found that the lifted sample was sealed bottles as supplied by Respondent no.4 & 5, the main responsibility for mis-branding is also with these respondents only i.e. M/s G. S. Consumer Products Pvt. Ltd. under section 80 of FSS Act.

In view of above, it is established that the Respondent no. 5 & 6 has accepted violation of regulation no. 4 (iii) of Food Safety & Standards (packaging & Labelling) Regulations, 2011 which is punishable under Section 52 of the Food Safety and Standard Act, 2006 and liable for penalty upto three lakh rupees. M/s G. S. Consumer Products Pvt. Ltd. The respondent no. 5 & 6 requested for lenient view as they comply with all norms of the FSS Act and Food Safety & Standards (packaging & Labelling) Regulations, 2011 but only this aspect remained to be complied due to their mistake.

ORDER:-

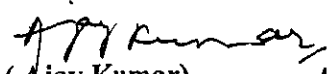
After taking into consideration of all the facts and circumstances of the case and material or record, I find it is a fit case to impose penalty in terms of Section 52 of the Food

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Safety and Standard Act, 2006 and, therefore, impose penalty of Rs.1.5 lakhs/-(Rs. One lakh fifty thousand rupees only), half of the maximum penalty, which shall be paid by the respondent no. 4 & 5. The Respondents shall deposit the said penalty in this court in the form of a Crossed Demand Draft on National Bank in favour of "Adjudicating Officer, District South-East" payable at Delhi within two weeks of receipt of this order. The respondents are further directed to ensure the compliance of all the provisions of Safety and Standard Act, 2006 and Food Safety & Standards (packaging & Labelling) Regulations, 2011.

In terms of provision of Rule 3.1.2 (5) of Food Safety and Standards Rule, 2011 one copy of this order is served to Respondents and Food Safety Officer.

Pronounced in open court given under my hand and the seal of the seal of this court on 22/5/2015.


(Ajay Kumar)
Adjudicating Officer/ADM (South-East) 22/5/15

Copy to

1. Food Safety Officer Department of Food Safety ,Govt. of NCT of Delhi,A-20, Lawrence Road Indl. Area,Delhi-110035.

Complainant

2. Sh. Manish Rana S/o Sh. Matbar Singh Rana , Flavours Italian Restaurant (A unit of M/s Flavours of Itlay Restaurant and Resorts P Ltd., 49-54 C Mool Chand Flyover Park, Ring Road, Defence Colony, New Delhi-24.
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- ✓ 6. M/s G.S Consumer Products P Ltd. Branch G-15, Shahpuri, Tirath Singh Tower, C-58, Janakpuri, New Delhi-58.