



REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL AGAINST ORDER NO. 19 OF 2019

1. TATA Chemicals Limited
Bombay House, 24 Homi Mody Street,
Fort, Mumbai – 400 001.
2. Shri P. M. Patel
(Responsible Person), TATA Chemicals
Limited, At Post Mithapur, District
Jamnagar, Gujarat – 361345.
3. M/s Santosh Hybrid Seeds (P) Ltd.
Ramchandra Complex, Shop No.8,
Nava Mondha, Jalna.
4. Shri Deepak Govardhanji Dayma
Nominee of Santosh Hybrid Seeds (P)
Ltd. Survey No. 137, Bhokardan Road,
Jalna.

... APPELLANTS

VERSUS

State of Maharashtra, at the instance of
Shri Prashant Suresh Ajintheekar, Food
Safety Officer, Food & Drug
Administration (M.S.), 3-A,
Administration Building, Opp. Bus
Stand, Buldhana.

... RESPONDENT

Mr. A. K. Somani, Advocate for Appellants.
Mr. Bhagwan M. Lonare, AGP for Respondent/State.

CORAM : ANIL L. PANSARE, J.

DATE : MAY 09, 2024.

JUDGMENT

. Heard Mr. A. K. Somani, learned Counsel for the Appellants and Mr. Bhagwan M. Lonare, learned AGP for the Respondent/State.

2. The Appellants i.e. TATA Chemicals Limited and others have filed Appeal under Section 71(6) of the Food Safety And Standards Act, 2006 (*hereinafter referred to as 'the Act of 2006'*), being aggrieved by the order dated 13/10/2016 passed by the learned Food Safety Appellate Tribunal, Buldhana in Appeal No. 1/2013, the Tribunal has dismissed the Appeal, and thus, upheld the order dated 14/5/2013 passed by the Adjudicating Officer and Joint Commissioner, (Food), Food and Drug Administration, Amravati in Adjudication Application No. 47/2012.

3. The Adjudicating Officer has found that the Appellants, who were the Non-applicants before it, have contravened the provisions of Section 26(2) (ii) and 27(1) of the Act of 2006 by manufacturing and selling substandard Iodized Salt TATA to the Applicant (Respondent herein) and accordingly under Section 51 of the Act of 2006 imposed penalty of ₹ 2,00,000/- on each Appellant. The operative part of the order reads thus :

“After considering the provisions of Section 49 and other related sections the non-applicants No.9 to 12 have contravened the provisions of section 26(2) (ii) & 27 (1) by manufacturing and selling of substandard Iodized Salt TATA to applicant which is punishable U/s. 51. Therefore, I impose penalty of Rs.2 Lakh on each applicant No.9 to 12 (ought to be Non-applicant Nos.9 to 12).”

4. Section 49 of the Act of 2006 provides that, while adjudging the

quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal shall have due regard to – (a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention; (b) the repetitive nature of the contravention; (c) whether the contravention is without his knowledge; and (d) any other relevant factor.

5. Neither the Adjudicating Officer nor the Tribunal has assigned any reason for imposing penalty of ₹ 2,00,000/- on each Appellant.

6. The Adjudicating Officer has discharged the Non-applicant Nos.1 to 8 before it, who were sellers and distributors on the ground that they have sold the product i.e. Iodized Salt in the same condition as was brought, and therefore, were not responsible for sale of substandard product. The Appellants, who were manufacturers, have been held guilty of manufacturing and selling substandard Iodized Salt.

7. The Food Safety Officer has, on 28/2/2012 drawn four samples of the Iodized Salt (*hereinafter referred to as 'TATA Salt'*) from the premises of Pushpak Traders, Akola Bazar, Khamgaon, District Buldhana. The Food Safety Officer sent one sample to Food Analyst, District Health Laboratory, Amravati (*for short, 'DHL'*) for test and analysis. The remaining three parts of samples were sent to Designated Officer, Buldhana. The DHL analyzed the sample and issued report dated 16/3/2012 stating therein that sample is misbranded as Iodized Salt, because it contravenes the Regulation No. 2.2.2(3)(i) of Packaging & Labeling Regulations of Chapter – 2 of Food Safety & Standards Regulations, 2011. This report was challenged in terms of Section 46(4) of the Act of 2006 by filing appeal before the Designated Officer, Buldhana with a request to send the sample of TATA Salt to the Referral Food Laboratory, Ghaziabad, New Delhi (*for short, 'RFL'*).

8. The Designated Officer, who had three parts of samples with him, sent the sample to RFL, which received the same on 11/6/2012. The sample was analyzed between 12/6/2012 to 13/7/2012. The RFL generated report on 27/7/2012 stating therein that in the sample of Iodized Salt (TATA Salt) Sodium Chloride contents (dry wt. Basis) is less than the minimum prescribed limits and the sample is, thus, substandard in terms of Section 3(1)(zx) of the Act of 2006.

9. The learned Counsel for Appellants submits that the challenge was to the report of DHL describing the sample as misbranded. The RFL ought to have, therefore, examined whether the sample was misbranded. It has, however, opined that sample was substandard, which also means that report of DHL describing sample as misbranded was incorrect.

10. While dealing with aforesaid contentions, the Adjudicating Officer has held that the Director, RFL is at liberty to conduct the test in terms of provisions of the Act and is in no way bound to give opinion only on portion of report of the Food Analyst, which is challenged. The Authority further has mentioned that report of the RFL is conclusive and can be relied upon in its totality. According to the Adjudicating Officer, since the Director, RFL has not commented on labeling, it can be well presumed that the labels were as per law, meaning thereby that the sample or product was not misbranded.

11. This reasoning indicates that the report given by the DHL describing the product misbranded, was incorrect. The Director, RFL, however, found the sample of the product as substandard. The question is whether such course is permissible.

12. Section 46 of the Act of 2006 describes the functions of the Food

Analyst. One of the functions is, the Food Analyst shall analyze the samples of the article of food within fourteen days from the date of receipt of the sample. Sub-section 4 of Section 46 provides for appeal against the report of Food Analyst. The Appeal lie before the Designated Officer who, if so decides, refer the matter to the RFL.

13. In the present case, the Designated Officer thought it proper to refer the matter to RFL. Rule 2.4.6 of the Rules, 2011 provides mechanism to process Appeal filed under Section 46(4) of the Act of 2006. It provides that the RFL shall issue certificate of analysis within fourteen days of receipt of sample.

14. The Appellants had filed Appeal against the report of DHL describing the sample as misbranded. The Director, RFL found that the sample was not misbranded, in the sense, it has found the sample as substandard. The Appeal filed by the Appellants was, in a way, thus allowed, but in the Appeal so filed, more serious consequences followed against the Appellants because they were blamed to have manufactured substandard food product. Thus, despite having found the analysis of DHL incorrect, the Appellants were made to suffer serious consequences that would attract aggravated punishment. This cannot be the scope of the Appeal.

15. It is well settled that in an appeal filed against a finding/report of authority below, the appellate authority shall either allow the appeal or dismiss it. In a given case, the finding may be modified in favour of the Appellants but not against the Appellants. In the present case, the appellate authority has neither upheld the finding of DHL nor set it aside but has replaced the finding. The net result is that the sample which was found misbranded is now found substandard.

16. In the circumstances, one would expect the Director, RFL to assign reasons as to how the DHL has incorrectly arrived at a conclusion of misbranded product when the sample was substandard. In absence of such reasons, the report of DHL loses significance, so also the purpose of filing appeal against such report. One cannot lose sight of the fact that RFL's report is final. Thus, appellate Laboratory's report is treated as final. The finality will have to be considered in the light of challenge made by the Appellants. In that sense, the finality would be attracted, if the Director, RFL upholds the report of DHL or sets it aside.

17. If the Director, RFL has to give different finding/opinion than what has been recorded by the DHL, the finding/opinion being rendered afresh, the Appellant must get opportunity to challenge such report. The Act of 2006 or the Rules of 2011 do not provide for mechanism in such contingency where the RFL arrives at a different opinion than that of DHL. In the circumstances, the least that could be expected from the Director, RFL is to assign reasons as to what went wrong before the DHL. The Director, RFL has not assigned any reason as to how the sample of TATA Salt was found as substandard when the Food Analyst, DHL found it to be misbranded. The report of RFL, sans reasons against DHL's report is nothing but a fresh report, without remedy of appeal against such report. Such a report cannot be accepted.

18. I am informed that this practice is followed in all matters. It is, therefore, necessary to issue direction to the Food Safety and Standards Authority of India to take appropriate steps, by issuing advisory, circular or office order directing RFL to assign reasons as to why is DHL's report unacceptable, if its opinion vary from that of DHL.

19. The learned Counsel for the Appellants then submits that, once the report of Food Analyst is challenged, the Designated Officer is under obligation to send sample to the RFL in terms of Rule 2.4.6 of the Rules, 2011. The RFL is required to analyse the sample within fourteen working days of its receipt and if it cannot do so, the Director, RFL is duty bound to inform the Designated Officer and the Commissioner of Food Safety giving reasons and satisfying the time to be taken for analysis.

20. The Counsel submits that this part of the procedure has been not followed. According to him, the sample was received by the RFL on 11/6/2012. The Analysis Report, therefore, ought to have been generated by 25/6/2012. The Report, however, was generated on 27/7/2012. There is nothing to show that the Director, RFL has informed the Designated Officer and the Commissioner, Food Safety of additional time which he would require to analyse the sample.

21. The learned Counsel has invited my attention to the Report of the RFL. It states that analysis of sample commenced on 12/6/2012 and completed on 13/7/2012. The Counsel submits that the RFL took more than thirty days to complete the analysis, when Rule 2.4.6(3) requires him to issue certificate of analysis within fourteen days of receipt of sample. He submits that the delay in completing the analysis has resulted into sample getting deteriorated because of its exposure to the environmental factors, such as heat, light, moisture etc.. and that could be the only reason why the sample which was otherwise found to be misbranded, has been found as substandard.

22. I find substance in the aforesaid argument. The Rule 2.4.6(3) of the Rules, 2011 stipulates that the certificate of analysis of the sample should be forwarded by the RFL within fourteen days of receipt of sample.

Admittedly, the sample was received on 11/6/2012. The Report itself indicates that analysis commenced on 12/6/2012 and concluded on 13/7/2012. There is nothing in the report that the Director, RFL has informed the Designated Officer and the Commissioner of Food Safety giving reasons and specifying additional time that would be taken for analysis. In other words, the Director, RFL has not assigned any reason as to why did it require more than thirty days to complete the analysis when the Rules of 2011 mandates completion of analysis within fourteen days.

23. The learned APP was also not able to show any document, by which the Director, RFL has informed the Designated Officer and the Commissioner, Food Safety of additional time, that will be taken for analysis, or has sought permission to that effect. The learned APP further failed to give any justification as to how the sample, that was found misbranded was found substandard in the analysis done by the RFL.

24. The absence of justification on the aforesaid count makes me to concede to the submissions made by the learned Counsel for Appellants that the exposure of sample to the environmental factors would affect its quality, which may result into deteriorating its standard and would become substandard.

25. The learned Counsel for Appellants submits, which appears to be correct, that the Iodized Salt can lose its iodine due to the environmental factors, such as heat, light, moisture etc.. The heat and light would decrease iodine contents of both packaged and open salt brands. The high humidity will result in rapid loss of iodine from salt iodized with potassium iodate, ranging from 30% to 98% of the original iodine content.

26. There is, thus, every reason to believe that the sample, if not analysed within the stipulated time, its quality will deteriorate and would become substandard. The report of the RFL, which is otherwise final, loses its significance, if it is not in compliance with the Rules of 2011.

27. Neither the Adjudicating Officer nor the Tribunal has considered this defence put-forth by the Appellants nor is there any finding on the same. The Adjudicating Officer as also the Tribunal has, by relying upon the RFL's Report, opined that the Appellants have contravened the provisions of Section 26(2)(ii) and 27(1) of the Act of 2006. This finding is contrary to the established procedure of analysis of sample. The provisions of the Act of 2006 are penal in nature, and therefore, adherence to the time limit for analysis must be scrupulously followed.

28. In the present case, the RFL has apparently not followed the time limit stipulated in the Rules of 2011. The Report, thus, suffers from non-compliance of mandatory provisions. The penalty cannot be imposed on the basis of such report. The Adjudicating Officer as also the Tribunal have rendered unsustainable finding. The Appellants, therefore, have made out a case resulting into following order.

ORDER

1. The Appeal against Order is allowed.
2. The Order dated 13/10/2016 passed by the Food Safety Appellate Tribunal, Buldhana in Appeal No. 1/2013 and Order dated 14/5/2013 passed by the Adjudicating Officer and Joint Commissioner, Food and Drugs Administrations, Amravati in Adjudicating Application No. 47/2012 are quashed and set aside.

3. All the Appellants are exonerated.
4. The Food Safety and Standards Authority of India shall issue advisory or office order or circular in terms of what has been noted in the body of the order.

(ANIL L. PANSARE, J.)

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