

**IN THE COURT OF SHRI PITAMBER DUTT
PRINCIPAL DISTRICT JUDGE
NEW DELHI DISTRICT
PATIALA HOUSE COURTS : NEW DELHI.**

FSAT – 10/2024

1. **Sanjeev Sharma,**
M/s. PepsiCo India Holdings Pvt. Ltd.,
5th Floor, Tower-A, Intellion Edge, Sector-72,
Southern Periphery Road, Gurugram-122101,
Haryana.
2. **Jagdeep Kaur,**
M/s. PepsiCo India Holdings Pvt. Ltd.,
Village – Channo, Patiala, Sangrur Road,
P.O. Bhawanigarh, District Sangrur,
Punjab-148026.Appellants

Vs.

State of Delhi,
Through Food Safety Officer – Kapil Malik,
Department of Food Safety, Government of NCT of Delhi,
8th Floor, Mayur Bhawan, Connaught Place,
New Delhi-110001.Respondent

ORDER

1. By this Order, I shall decide the appeal filed by the Appellants against the impugned order dated 24.08.2024 passed by the Adjudicating Officer/Additional District Magistrate, thereby

imposing a consolidated penalty of Rs.15,000/- each on the appellants No. 1 & 2 for violation of Section 26 (i) and Section 26 (ii) of the Food Safety and Standards Act, 2006 and Regulation No. 2.2.2.2 (f) (i) of the Food Safety (Packaging & Labelling) Regulation, 2011. The brief facts giving rise for filing of this appeal, as narrated by the Appellants, are given as under : -

2. The appellants have averred that FSO – S.P. Singh along with Naubat Singh (Field Assistant) visited the premises of M/s. Mittal Store at Shop No. RZ-7, Amar Enclave, Nawada, Uttam Nagar, New Delhi-110059 on 08.12.2017 and purchased 12 packets of ‘Lays – American Style Cream & Onion Flavour Potato Chips’, 95 grams each for Rs.420/- for the purpose of analysis being manufactured by M/s. PepsiCo India Holdings Pvt. Ltd.

3. The Appellants have further averred that FSO divided the sample of food articles into four equal parts and each sample counterpart was separately packed, fastened and sealed as per the provisions of the Food Safety and Standards Act, 2006 and signatures of Food Business Operator (FBO) were obtained on the D.O. (Designated Officer) slip bearing the signatures of the DO and wrapper of the bottles containing the sample in such a manner as to partly appear on the DO slip and partly on the wrapper of the sampled packets. The FSO obtained signatures of the FBO on the labels of all counterparts of the sample. The FSO prepared notice

in Form No. V-A at the spot and same was given to the vendor FBO-Ashok Kumar Mittal. Panchnama was prepared on the spot and all the sample documents prepared by the then FSO were also read over and explained to the FBO who had signed the same. These documents were also signed by the FSO and witness Naubat Singh (Field Assistant).

4. The Appellants have further averred that one part of the aforesaid sample bearing Sample No. 643/1036/211/2017 and D.O. Code No. 06/DO-20/10791 along with copy of memo in Form- VI was sent to the Food Analyst, Government of Delhi on 11.12.2017 upon which the Food Analyst gave his report dated 19.12.2017 bearing No. FSS. 1291/2017 observing that **‘the sample is mis-branded because there is violation of regulation No. 2.2.2.2 (f) (i) of the Food Safety and Standards (Packaging & Labeling) Regulation 2011’**

5. The Appellants have further averred that on 28.12.2017, the then D.O. sent a copy of the Food Analyst Report providing them an opportunity to file an appeal against the same. Subsequently, Secretary of the company M/s. PepsiCo India Holdings Pvt. Ltd. gave reply on 02.02.2018 against the notice dated 28.12.2017 stating in it to withdraw the said notice and not to initiate any proceedings as there has been no violation on his part with respect to the sample product.

6. The Appellants have further averred that FSO submitted a report for extension of period for launching prosecution as the investigation regarding firms involved in supply chain, FBO firm, marketing company, manufacturing company etc. could not be completed due to their alleged non co-operation. The said limit was extended for further six months beyond the period of one year by the then Commissioner, Food Safety, as per Section 77 of the Food Safety and Standards Act, 2006.

7. The Appellants have further averred that the Department of Food Safety, Government of Delhi accorded Sanction Under Section 36 (3) (e) of the Food Safety and Standards Act, 2006 and directed the FSO to file adjudication application/impugned proceedings before the Adjudicating Officer against the appellants being the nominee of the marketing unit of the company at Gurugram, pursuant to which the respondent filed an application before the Adjudicating Officer, wherein the Appellants submitted their reply before the Adjudicating Officer along with list of witnesses. The Adjudicating Officer thereafter, heard the parties and passed the impugned order. Feeling aggrieved from the same, the present appeal has been filed.

8. Ld. Counsel for Appellants has contended that the appellants have taken various plea before the Adjudicating Officer in their reply against the initiation of prosecution, however the

Adjudicating Officer has not considered any such reply and has passed the impugned order in violation of principles of natural justice. He has further contended that the application filed by the respondent before the Adjudicating Officer was barred by limitation due to un-substantiated reason for condonation of delay and non-application of mind. He has further contended that the report of the Food Analyst was beyond the scope of Food Safety & Standards Act, 2006 as the said report was vague. The report is silent on the point as to how and in what manner non mentioning of percentage of ingredients upon the label is referred to as mis-branding. He further contended that a careful perusal of Regulation No. 2.2.2.2 (f) (i) of the Food Safety & Standards Act clearly shows that percentage of an ingredient was required to be mentioned on the label at the time of manufacturing. In the present case, the object was a proprietary food and it was not sold as mixture or combination. Hence, percentage of ingredient was not required to be mentioned on the product. Ld. Counsel has further contended that the Laboratory which had submitted the report was not a recognized Laboratory and therefore, the report was not valid and admissible in evidence under the Food Safety & Standards Act, 2006. He has further contended that the application of the prosecution was also filed against the company M/s. PepsiCo India Holdings Pvt. Ltd., however the adjudicating officer has not mentioned the name of the company M/s. PepsiCo India Holdings Pvt. Ltd., in the present order holding it liable and no reason has been assigned in the order for not passing any order against the

company M/s. PepsiCo India Holdings Pvt. Ltd., which had manufactured the said product. He prays that the appeal be allowed and impugned order may be set-aside.

9. Ld. Counsel for the respondent has contended that the FSO had taken the sample of the product from the store of the appellant which was sent for analysis and as per report submitted by the Food Analyst, it was clear that appellants have violated the provisions of Food Safety & Standards Act, 2006 because the sample was kept for human consumption and was in violation of Section 26 (i) and 26 (ii) of the Food Safety & Standards Act, 2006. He has further contended that the Adjudicating Officer has considered the plea raised before it and had passed a reasoned order. He prays that the appeal be dismissed.

10. I have heard Ld. Counsel for Appellants and Ld. Counsel for respondent and perused the appeal, impugned order as well as record. Perusal of the above shows that the FSO had visited the shop of the appellants on 08.12.2017 and taken the sample of 'Lays – American Style Cream & Onion Flavour Potato Chips', after making a payment of Rs.420/-. The samples were retained/received as per the provisions of Food Safety & Standards Act, 2006 and one part of the sample was sent to Food Analyst, Government of Delhi who submitted his report on 19.12.2017 observing that **the sample is mis-branded because there is violation**

of Regulation No. 2.2.2.2 (f) (i) of the Food Safety & Standards (Packaging and Labeling) Act, 2011.

11. Perusal of record further reveals that thereafter, the FSO requested for extension of period for launching prosecution which was accorded and after getting time, approval was taken and application for prosecution was filed before the Adjudicating Officer.

12. The respondent - department filed an application under Rule 3. 11 (i) (3) of the Food Safety & Standards Act, 2006 and Rule 2011 against six respondents including M/s. PepsiCo India Holdings Pvt. Ltd. as respondent No. 6 but surprisingly, the Adjudicating Officer while passing the impugned order dated 24.08.2024 did not even mention the name of respondent No. 6 in the memo of parties of the impugned order.

13. No reason or finding has been given in the entire impugned order for exonerating M/s. PepsiCo India Holdings Pvt. Ltd., who is the manufacturer of the product, sample of which was found mis-branded.

14. It is also relevant to mention that after filing the application, the Appellants appeared before the Adjudicating Officer and submitted their detailed reply taking various grounds i.e. (i) The adjudication application is barred by limitation due to

un-substantial reason for condonation of delay, (ii) Because the report of the Food Analyst Report is beyond the Food Safety & Standards Act, 2006, (iii) Report of the Food Analyst is vague and has no evidentiary value and (iv) Mis-Brand report was never produced by the Food Analyst and placed on record.

15. Besides the above, other grounds were also taken by the appellants in their reply. However, the Adjudicating Officer while passing the impugned order dated 24.08.2024 has not considered the plea taken by the Appellants in their reply.

16. The Adjudicating Officer has not given any explanation in the order as to why and on what basis the plea taken by the Appellants in their reply has been discarded.

17. The impugned order is in violation of principles of natural justice because while passing the impugned order, the Adjudicating Officer has not considered the plea taken by the appellants in their reply which is in violation of principles of natural justice.

18. The Hon'ble Delhi High Court in case titled "**Jaspal Singh Jolly Vs. Municipal Corporation of Delhi**", reported as 125 (2005) DLT 592, has dealt with said issue, which is reproduced herein below : -

“Noting the decision of the Supreme Court as *Erusia Equipments & Chemical Ltd. Vs State of West Bengal*, (1975) 1 SCC 70: AIR 1975 SC 266 (at P. 269); 106 (2003) DLT 573, *Mekaster Trading Corporation Vs Union of India*; and (1990) 4 SCC 594, S.N. Mukherjee Vs Union of India, I had held that the aforesaid decision established the legal proposition that orders which are subject to judicial review must be in compliance with the principle of natural justice, namely (a) proper hearing, (b) decision by an unbiased mind; (c) taking into consideration all the relevant factors and excluding the irrelevant factors; and (d) reasons to be recorded.

Needless to state, reasons enable the superior Court to effectively exercise supervisory jurisdiction. Additionally, when reasons are stated, the persons affected knows the mind against him. A decision may be right, but not sound. Such a decision leaves a grievance in the mind of the person affected that he was not told why the decision was taken.”

19. The right to be heard is one of the fundamental principle of natural justice, which is to be followed by all the Administrative Authorities and Quasi Judicial Authorities. The basic fundamental principle of natural justice is that the person against whom an order is passed must know as to why and on what basis said order has been passed. The order must be a speaking one, giving reasons for reaching to the conclusion and must not be cryptic in nature.

20. In view of the above facts and circumstances, the appeal filed by the appellants is allowed. The impugned order dated 24.08.2024 is set-aside. The matter is remanded back to the Adjudicating Officer for deciding the same afresh after considering the reply submitted by the appellants and after affording an

opportunity to the appellants of being heard. The Adjudicating Officer thereafter, shall pass a speaking order after considering all submissions, plea and defences taken by the Appellants and shall communicate the order to the Appellants.

21. The record of the Adjudicating Officer/ADM be sent back along with a copy of this order. Appeal file be consigned to Record Room after necessary compliance.

Pronounced in the Open Court **(Pitamber Dutt)**
On 7th August, 2026. Principal District & Sessions Judge
New Delhi District
Patiala House Courts/ND/07.08.2026.