

# **Suresh Kumar Gupta vs The Adjudication Authority And 2 Others on 31 August, 2021**

**Author: Subhash Chand**

**Bench: Kaushal Jayendra Thaker, Subhash Chand**

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Court No. - 37

Case :- FIRST APPEAL FROM ORDER No. - 1057 of 2021

Appellant :- Suresh Kumar Gupta

Respondent :- The Adjudication Authority And 2 Others

Counsel for Appellant :- Madhup Narain Shukla

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Hon'ble Subhash Chand,J.

1. Heard Sri Madhup Narain Shukla , learned counsel for appellant and perused the record.
2. The present appeal has been filed challenging the judgment and order dated 22.06.2019 passed in Case No. 53 of 2017 (State Vs. Suresh Kumar Gupta) under Section 68(2) of Food Safety and Standards Act, 2006.
3. This appeal is under Food Safety and Standards Act, 2006. The appeal requires to be allowed. The provisions of Section 76 of the Food Safety and Standards Act, 2006 reads as under:

"76. Appeal.-

(1) Any person aggrieved by a decision or order of a Special Court may, on payment of such fee as may be prescribed by the Central Government and after depositing the amount, if any, imposed by way of penalty, compensation or damage under this Act, within forty-five days from the date on which the order was served, prefer an appeal to the High Court: Provided that the High Court may entertain any appeal after the expiry of the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause for filing the appeal within the said period.

(2) An appeal preferred under this section shall be disposed of by the High Court by a bench of not less than two judges."

4. The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. It means the designated officer after scrutiny of the analyst report and if he found that the contravention is punishable with imprisonment or fine, then he will send his recommendations to the Commissioner of Food Safety for sanctioning to run prosecution within 14 days. But in the present case the designated officer has not put his recommendations before the Commissioner of Food Safety for sanctioning to run prosecution against the appellant and after delay of 9 months from the receipt of the analysis report 02.03.2016, on 05.12.2016 he has itself taken decision to run the prosecution against the appellant, however, the same officer was holding the post Adjudicating Officer. Therefore the same is in gross violation of the provisions, which is mandatory under the Act, 2006.

5. The order of the authority below cannot be sustained for scrutiny before this Hon'ble Court as the same is passed without affording any reasonable opportunity to the appellant though of course notice was issued way back in the year 2017 but as per the appellant it was never served on the appellant. However, while entertaining this appeal we feel that the authority concerned has not mentioned the fact that the notice was received but in fact the appellant has not received the notice and could not put to his defence. The appellant is not a manufacturer and according to the appellant this aspect of the matter has not been looked into.

6. While condoning the delay we have directed the appellant to deposit 50% amount of fine. In compliance of the order dated 17.08.2021 the appellant has deposited 50% of the amount of fine i.e. Rs.20,000/- on 27.08.2021. Receipt of deposit has been brought on record as Annexure SA-1 to the supplementary affidavit.

7. The ground to set aside the order impugned is on hyper technical grounds as the principles of natural justice has not been followed by the quasi judicial authority while passing the said order. The appeal is allowed and the order impugned dated 22.06.2019 is set aside.

8. The allowing of this appeal is on technical ground that neither Sri S.K. Gupta nor his client was issued any notice. There is disputed question of fact that he was issued notice or yet to be issued. There is also dispute regarding signature of the appellant in the order-sheet.

9. We direct the parties to appear before the Adjudication Authority for adjudication of the case within one week from today as the respondent has raised dispute regarding his presence before the Adjudication Authority, Basti. Further he was never served with any notice.

10. Secondly, we have tried to balance the respondent by deposit of 50% of the amount under the order impugned. The amount deposited is sought to be substantiated by the Supplementary affidavit. Normally we could not accept the affidavit in Court rather direct to file the same in the registry because the matter is being disposed of finally, hence we accept it and the same be taken on record.

11. The deposit shall be subject to result of the appeal. The appellate authority will decide the matter afresh after providing full opportunity to the parties within a period of twelve weeks from today.

12. We are thankful to the counsel for the parties who have assisted the Court in disposing of this appeal finally.

13. Let the record of court below be sent back to the concerned Adjudication Authority, Basti.

Order Date :- 31.8.2021 Prajapati