

Diamond Beverages Private Limited vs Food Safety Officer on 17 October, 2023

Author: Harish Tandon

Bench: Harish Tandon

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F.M.A.T. 502 of 2023
(CAN 1 of 2023)

Ct. No. 04

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Diamond Beverages Private Limited
Vs.
Food Safety Officer

Mr. Kalyan Bandopadhyay, Mr. Harsh Hiroo Gursahani, Mr. Suhaan Mukerji, Ms. Karthika Rajmohan.

... for the appellant.

The instant appeal is filed under Section 71(6) of the Food Safety and Standards Act, 2006 assailing an order of the Tribunal; whereby and whereunder the appeal was dismissed.

The cause of action relating to initiation of the proceeding under the aforesaid Act arose on 18th February, 2017 when the packaged drinking water for human consumption was seized and sent for chemical examination relating to misbranding under Section 3(1)(zf) of the said Act. The adjudicating authority before whom the case was decided ruled out the allegation of misbranding, but passed an advisory order that the names of salts of sodium having not disclosed on the label contravens the Regulation 2.2.2.2 (c) of the Food Safety and Standards (Packaging and Labeling) Regulations, 2011 and directed the appellant herein to put the same on the label within one month therefrom.

The Appellate Tribunal while declining to interfere with the order of the adjudicating officer observed that it was merely an improvement direction in terms of Section 32 of the said Act and, therefore, there is no necessity of interfering with such order.

A point is taken before us whether the adjudicating officer can usurp and exercise the powers that of the designated officer defined in the said Act and in the event, it is so the order is per se illegal having passed without jurisdiction.

Section 32 of the said Act provides the improvement notice to be issued by the designated officer on the ground of reasonable belief that any food business operator has failed to comply with any

regulation and may pass such order, which in the opinion of the designated officer is in conformity with the Regulations and Rules. The designated officer as defined in the definition section means an officer appointed under Section 36 of the said Act, which elaborately contains the functions and powers to be exercised by the designated officer which does not appear to us can be exercised by any other officer. Section 68 of the said Act contained in Chapter X of the said Act relates to adjudication under the aforesaid Act; wherein the eligibility criteria is completely different and distinct from the eligibility criteria fixed for the purpose of designated officer.

The powers of the adjudicating officer is akin to the powers of a Civil Court and Sub-Section 3 of Section 68 exhaustively contained the powers to pass certain order which does not seem to us that the adjudicating officer can usurp the power of the designated officer and pass the improvement order under Section 32 of the said Act.

We, thus, find prima facie case has been made out by the appellant not only for admission but for passing an interim order.

Accordingly, the appeal is admitted. There shall be a stay of operation of the order dated 12th November, 2021 passed by the adjudicating officer in connection with FSS Case No. 3/JM/FSS/MLDT/18 for a period of ten weeks from date or until further order/orders of this Court, whichever is earlier.

The appellant is directed to serve a copy of the instant application upon the respondent by speed post and shall file affidavit of service on the returnable date.

The matter is made returnable one week after the date of reopening of this Court following Puja vacation for the year 2023.

(Harish Tandon, J.) (Prasenjit Biswas, J.)