

FOODLEX

A newsletter on Food Laws, Legal Metrology
and Pesticide Regulations

Volume 1, Issue: 3



Mumbai • New Delhi • Goa • Patna

FSSAI raids shops in Madurai

In order to catch hold the violators of FSSAI laws and regulations, the enforcement wing of the Food Safety and Standards Act 2006 conducted surprise check in the markets of Madurai District. This routine exercise on part of the enforcement team turned out to be a major catch as they found plenty of food products which had surpassed their consumption dates and / or expiry dates but were still placed on their shelves waiting for the unaware customers to purchase those expired products. In fact there were also certain goods which did not have the date of manufacture and / or packing mentioned on them. The object behind the present exercise was to ensure that public health is not at stake and to issue a stern warning to the violating sellers and shopkeepers for non-compliance of the prescribed requirements of the FSSAI Act and Rules.

Reward for providing information on violation of FSSAI Rules

Consumer Association of India (CAI) in its first major initiative under Information, Education, and Communication (IEC) campaign has announced that whosoever finds any violation of Food Laws and Regulation committed by any seller, shopkeeper or vendor can contact the authorities and apprise them about the alleged violations. Further, by providing such information the person becomes eligible for the prize money which may go up to Rs. 50,000. This step by the FSSAI and the Consumer Association of India shall help in fighting the battle against unsafe foods as this incentive will motivate many people from the general public to track down the violators.

M/s Agriculture Traders & Another. vs. State Of Punjab & Another

In this recent case before the Punjab and Haryana High Court, the Petitioners filed the petition for quashing of complaints filed against them under relevant sections of the Insecticides Act for the offences relating to misbranding. The complainant, an inspector, visited the premises of the Petitioners and found that certain bags of Cartap Hydro Chloride 4% G were misbranded and in so much as the percentage of active ingredient content was wrongly mentioned. Consequently, he filed the complaint against the Petitioners including the main dealer, the sub dealer, the marketing company and the manufacturing company among others. The Petitioners relying upon the judgments in M/s Mahaluxmi Beej Bhandar v. State of Haryana and M/s Zamidara Pesticides v. State of Punjab contended that in cases where the sample is drawn from the sealed packed container and the said material was not stated to be improperly stored then only the manufacturer would be liable for the offence relating to misbranding.

Dear Reader,

Recently the Central Government has notified draft amendment to the Insecticides (Amendment) Rules, 2013. As per the proposed amendment, the duration of licenses for retail selling of household insecticides has been increased to ten (10) years.

Presently, the licenses for household insecticides are issued or renewed for a period of two years.

Meanwhile, the Central Government has invited objections and suggestions in this regard from all the concerned parties before 29.03.2013. The same may be forwarded to the Joint Secretary (Plant Protection), Ministry of Agriculture, Department of Agriculture and Co-operation, Krishi Bhawan, New Delhi - 110001.

(Gurmeet Singh Kainth)
Partner

Further, the Learned Deputy Advocate General accepted the fact that the sample was drawn from a sealed container and there was no allegation that it was not properly stored and had also failed to cite any contrary judgment.

Relying upon the judgments cited by the Petitioners, the Hon'ble High Court came to the conclusion that if any sample is drawn from a sealed packed container and provided that the material was not stated to be improperly stored, then in these situations only the manufacturer would be liable for the violation of misbranding, the dealers and the marketing company cannot be held liable / responsible for the same.

Delhi Administration through Designated Officer v. Manohar Lal

Present decision was result of an appeal filed by the Delhi Administration challenging the impugned judgment of the Additional Sessions Judge (ASJ) wherein the Hon'ble ASJ had acquitted the Respondent from all charges under the provisions of Prevention of Food Adulteration Act, while stating that the photo-chromatic test was not a reliable test to determine the presence of an artificial colour in the food items, in this case 'Dal Arhar'. Another major reason given for the acquittal was the delay of 6 days in signing of the report by the Public Analyst from the date of making of the report.

The counsel for the Appellant relied upon Dhian Singh v. Municipal Board, Saharanpur in support of his contention that mode or particulars of analysis or test applied are not to be seen by the Court in order to come to a conclusion whether the article of food was adulterated or not. It was also contended that a delay in signing of the report does not result in undermining the value of the report.

The Hon'ble High Court on the basis of the judgment cited by the Appellant opined that regarding the relevancy of photo-chromatic test, the same cannot be a ground for acquittal because if the Respondent was not satisfied with the report of the Public Analyst, he had the option to get it analysed by the Director CFL.

Further, regarding the issue of delay in signing of the report, it was opined by the Hon'ble High Court that a report of the Public Analyst cannot be ignored only on the ground that the report is signed by the Public Analyst later on and not on the date on which sample was analysed without examining the Public Analyst as a witness either by the Court or the accused raising a doubt about the correctness of the report.

D. H. Law Associates - Advocates & Solicitors

111, Free Press House, Free Press Journal Road, 215, Nariman Point, Mumbai - 400 021.

T: +91-22-6625 2222 F: +91-22-2285 5821

E: contactus@dhlawassociates.com W: www.dhlawassociates.com