



Thursday, July 26, 2012

[Home](#) ■ [About Us](#) ■ [Contact Us](#) ■ [Feedback](#) ■ [Search](#) ■ [Subscribe](#) ■ [Advertise](#) ■ [Ratecard](#)

News
Policy & Regulations
Food Processing
Beverages
Dairy Products
Agriculture
Snacks & Confectionery
Fruit & Vegetable
Meat & Seafood
Sugar
Oils & Fats
Ingredients/Flavours
Spices
Retail
Bakery / Biscuits
Poultry
International
Company Report
New launches
Nutrition
Hotels & Hospitality
Features
Edit Column
Special Reports
Interview
Issues
In Focus
Analysis
Budget
Festival
F&B Projects
Marketing
Brand news
Marketing
People

[WideView](#) [Increase font](#) [Decrease font](#)



Overview

Adjudication under the Food Safety and Standards Act, 2006

Monday, December 26, 2011
Minakshi Sarma Dabas

“Legislation and adjudication must follow, and conform to, the progress of society,” so said Abraham Lincoln.



With the much-awaited transition from a plethora of food laws and manifold control points to the single-integrated Food Safety and Standards Act 2006 (hereinafter referred to

as FSSA) regime, there has been a critical shift in the process of adjudication as well envisioning expeditious disposal of cases related to food safety issues.

Special courts, summary trials and appellate tribunal have been provided for. The Food Safety and Standards Rules, 2011, deals inter alia with adjudication proceedings, procedure for appeal to tribunal, qualification of the presiding officer of the tribunal etc.

Five judicial forums for trial / adjudication have been provided for under the FSSA and Rules thereunder - Adjudicating Officer, Food Safety Appellate Tribunal, Judicial Magistrate of the First Class / Metropolitan Magistrate, Special Court and the High Court.

Adjudicating Officer

Section 68 of the FSSA provides for the appointment of an Adjudicating Officer (not below the rank of Additional District Magistrate) by the state governments. He has powers of civil court and limited jurisdiction of criminal court too.

Interview of the Week

"In Indian premium biscuit market, Cookie Man occupies 2%"



FORTHCOMING EVENTS

- [International](#)
- [Domestic](#)
- FNB NEWS SPECIALS
- [Forthcoming](#)
- [Past](#)

OVERVIEW

Opportunity knocks: FDI for growth



Books
Events
Allied Sector
Technology
Equipment
Packaging
Education
Food Safety

The Adjudicating Officer has been empowered to hold an inquiry for purpose of adjudicating the following offences - selling food not of the nature or substance or quality demanded (Sec 50), sub-standard food (Sec 51), misbranded food (Section 52), misleading advertisement (Sec 53), food containing extraneous matter (Sec 54), failure to comply with the directions of Food Safety Officer (Sec 55), unhygienic or unsanitary processing or manufacturing of food (Sec 56), food products possessing adulterant (Sec 57), contraventions for which no specific penalty is provided (Sec 58), subsequent offences (Sec 64), compensation in case injury of death of consumer (Sec 65), offences by companies (Sec 66) and penalty for contravention of provisions of this Act in case of import of articles of food to be in addition to penalties provided under any other Act (Sec 67).



[Past overview...](#)

All Your Ingredients In One Magazine
Ingredients
SOUTH ASIA

For holding an inquiry for the purpose of adjudication as to whether any person has violated any of the provisions of FSSA as mentioned above of which the offence is alleged to have been committed, the Adjudicating Officer is mandated in the first instance to issue a notice indicating the nature of offence alleged to have been committed and the date of hearing (along with a report of the Food Analyst) to such person giving him an opportunity to make a representation in the matter within a specific period.

The Adjudicating Officer has been empowered to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any relevant document. The state government may also appoint a presenting officer from amongst the panel of advocates of the court of local jurisdiction, in an inquiry.

The Adjudicating Officer may impose appropriate penalty to violators after due consideration of the evidence produced.

Food Safety Appellate Tribunal

Section 70 of the FSSA provides for the constitution of one or more Food Safety Appellate Tribunal(s) by the state government to hear appeals from the decisions of the Adjudicating Officers. The tribunal consists of a single member designated as "Presiding Officer" mandated to have occupied the position of a District Judge and attained the age of 65 years on the date of appointment.

Any person aggrieved by the decision of the Adjudicating Officer may file an appeal before the Appellate Tribunal within a period of 30 days from the date on which the copy of the order against which the appeal is filed, is received by the appellant. The provisions of Limitation Act, 1963, shall be applicable to an appeal made to the Tribunal, except otherwise provided by the FSSA.

The Tribunal has vested with the same powers, which a civil court has under the Code of Civil Procedure 1908 (5 of 1908) (hereinafter referred to as "CPC") while trying a suit, in respect of - (a) summoning and enforcing the attendance of any person and examining him on oath; (b) directing the discovery and production of documents or other electronic records; (c) receiving evidence in form of affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for non-appearance of the appellant, or deciding it ex-parte;

(g) any other matter prescribed by the Central government.

The Tribunal is not bound by the procedure laid down by the CPC but should be guided by the principles of natural justice. It can regulate its own procedure and decide on the place of its sittings. The Tribunal has vested with certain powers of criminal courts too under the FSSA.

Any person aggrieved by an order of the Tribunal may file an appeal to the High Court of the state concerned. Normally this appeal is to be filed within 60 days from the date of communication of the decision or order of the Tribunal to him though the High Court can grant a further period of 60 days on reasonable reasons.

While adjudging the quantum of penalty, the Adjudicating Officer or the Tribunal is mandated under Section 49 of FSSA to follow the general provisions as follows - (a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention, (b) the amount of loss caused or likely to cause to any person as a result of the contravention, (c) the repetitive nature of the contravention, (d) whether the contravention is without his knowledge, and (e) any other relevant factor.

Civil Courts not empowered

The FSSA bars a Civil Court for entertaining any suit or proceeding in respect of any matter which an Adjudicating Officer or the Tribunal is empowered by or under the FSSA to determine (Section 72).

Special Courts

Section 74 of the FSSA empowers the Central government or the state government to constitute Special Courts for the trial of offences relating to "grievous injury or death of the consumer" for which punishment of imprisonment for more than three years has been prescribed. A public prosecutor and one or more Additional Public Prosecutor may be appointed for every Special Court. Special Public Prosecutor can also be appointed for any particular case or class or group of cases.

Special Court may, on its own motion, or on an application made by the Public Prosecutor and, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting. Any person aggrieved by an order of a Special Court may prefer an appeal to the High Court within 45 days from the date of serving of Order though the High Court can grant further period on reasonable reasons.

Summary trial

Summary Trial by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate has been further provided under Section 73 for offences not triable by a Special Court according to procedure prescribed for summary trials in Sections 262 to 265 (both inclusive) of the CPC. In a summary trial, the Magistrate can pass a sentence of imprisonment up to one year only. If it appears to the Magistrate that summary trial is not desirable in a particular case because the nature of the case is such that a sentence of imprisonment of more than one year is to be imposed, or for other reasons, the Magistrate can pass an order to that effect after hearing the parties, and thereafter reexamine any witness and hear or rehear the case in the manner provided by the Code.

Compounding of offences

The FSSA under Section 69 also provides that designated officers empowered by the Commissioner of Food Safety can compound offences committed by petty manufacturers who himself manufacture and sell any article of food, retailers, hawkers, itinerant vendors, temporary stall-holders, by accepting from them a sum up to Rupees one lakh as compensation, and can discharge him if in custody. In such cases no further proceedings relating to that offence should be taken against him. However, offences for which punishment of imprisonment has been prescribed under the Act cannot be compounded.

Time limit for cognisance of offences

No court can take cognisance of an offence under the FSSA after the expiry of the period of one year from the date of commission of an offence. However, the Commissioner of Food Safety can, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.

(The writer is advocate, corporate law group, New Delhi)

[E-MAIL THIS!](#)[PRINT THIS!](#)[BACK](#)[Post a Comment](#)

[Home](#) | [About Us](#) | [Contact Us](#) | [Feedback](#) | [Disclaimer](#)
Copyright © Food & Beverage News. All rights reserved.

Designed & Maintained by [Saffron Media Pvt Ltd](#)