



CHAPTER 11

**Adjudication, Prosecution,
Offences and Penalties**

Rule 3.1 of Food Safety & Standards Rule, 2011 deals with the adjudication proceedings and Section 42 of the Food Safety & Standards Act, 2006 provides with the procedure of launching prosecution.

A. Adjudicating Officer (68 of the FSS Act)

For the purposes of adjudication, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed is notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

B. Adjudication Proceedings

1. On receipt of the copy of the report of Food Analyst, if the sample does not conform to the requirements of FSS Regulations and if no appeal has been preferred by the Food Business Operator, the Designated Officer examines the case on the basis of the Sections under which the person has been charged as to whether the contravention is punishable with imprisonment or the same is punishable with fine only under the Act.
2. If the Designated Officer decides that such contravention is not punishable with imprisonment but only with fine under the provisions of the Act, he authorizes the Food Safety Officer to file with the Adjudicating Officer an application for adjudication of the offence alleged to have been committed by the person from whom the food sample has been taken or the person whose name and address and other particulars have been disclosed and/or the seller or manufacturer of the food item in respect of which the report has been received.
3. On receipt of the communication from the Designated Officer authorizing the filing of the adjudication application, the Food Safety Officer files the application for adjudication with the Adjudicating Officer for adjudication of the offence/contravention alleged to have been committed.
4. On receipt of the application for adjudication from the Food Safety Officer, the Adjudicating Officer commences the inquiry proceedings.
5. If, upon consideration of the evidence produced before the Adjudicating Officer, the Adjudicating Officer is satisfied that the person or persons or any of them against whom the inquiry has been conducted, has become liable to penalty and/or any suitable administrative action he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of the relevant Section or Sections of the Act.
6. If however, the Adjudicating Officer is satisfied that the person or persons or any of them against whom the inquiry has been conducted for the contravention of provisions of the Act, has or have not been proved beyond doubt, the Adjudicating Officer shall dismiss the case.
7. Every order made is dated and signed by the Adjudicating Officer and specifies the provisions of the Act or the Rules or the Regulations in respect of which the offence has taken place and contains brief reasons for such decision. While imposing monetary penalty, the Adjudicating Officer shall have due regard to the provisions of Section 49 of the Act. Such penalty will be remitted in the form of a crossed demand draft drawn on a nationalized bank in favour of "Adjudicating Officer, ____ District" payable at the station where the Adjudicating officer is located.
8. The Adjudicating Officer sends a copy of the order to the person or persons against whom the inquiry was conducted and the Food Safety Officer who has filed the application for adjudication.
9. A notice or an order issued under these rules shall be served on the person or the persons against whom the adjudication proceedings were held or inquiry has been conducted, in any of the following manner:

- (a) by delivering or tendering it to that person or his duly authorized representative or
- (b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on or last carried on, business or personally works or last worked for gain or
- (c) if it cannot be served in the manner specified under above two options by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided or carried on business or personally works or has worked for gain and written report thereof should be witnessed by two persons.

C. Procedure of launching Prosecution and Role of a Food Safety officer therein (Section 42)

1. The Food Safety Officer is responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.
2. The Food Analyst after receiving the sample from the Food Safety Officer analyses the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.
3. The Designated Officer after scrutiny of the report of Food Analyst decides as to whether the contravention is punishable with imprisonment or fine only.
4. In the case of contravention punishable with imprisonment, he sends his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.
5. The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-
 - (a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or
 - (b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.
6. The Commissioner of Food Safety communicates his decision to the Designated Officer and the concerned Food Safety Officer who launches prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication is also be sent to the purchaser if the sample was taken under Section 40.

D. Offences & Penalties

1. Chapter IX of the Food Safety & Standards Act, 2006 contains the general provisions for penalties for various offences / contravention of provisions of the Act, Rules & Regulations committed by an individual. A person may render any article of food injurious to health by means of one or more of the following operations, namely:-
 - (a) adding any article or substance to the food;
 - (b) using any article or substance as an ingredient in the preparation of the food;

- (c) abstracting any constituents from the food; or
- (d) subjecting the food to any other process or treatment, with the knowledge that it may be sold or offered for sale or distributed for human consumption.
2. In determining whether any food is injurious to health, regard shall be given not only to the particular health sensitivities of a specific category of consumer where the food is intended for that category of consumers but also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities.
3. While adjudging the quantum of penalty, the Adjudicating Officer/the Tribunal, shall have due regard to:-
- (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,
4. Various Penalties and Punishments under the Food Safety & Standards Act, 2006

Section	Offence	Liability	Penalty		
			Monetary (not exceeding in	Imprisonment (not exceeding)	Any Other
50	Selling food not of the nature or substance or quality demanded	Seller	5 Lacs		
Note: Penalty in case of Petty food business operator, for non-compliance under Section 50 shall not exceed twenty five thousand rupees.					
51	sub-standard food	Manufacturer, Seller, Distributer, Storage, Importer	5 Lacs		
52	Misbranded food	Manufacturer, Seller, Distributer, Storage, Importer	3 Lacs		Adjudicating Officer may issue a direction to the person found guilty, for taking corrective action to rectify the mistake or such article of food shall be destroyed.
53	Misleading advertisement or a label	Person who publishes, or is a party to the publication of an	10 Lacs		

Section	Offence	Liability	Penalty		
			Monetary (not exceeding in	Imprisonment (not exceeding)	Any Other
54	Food containing extraneous matter	Manufacturer, Seller, Distributer, Storage, Importer	1 Lac		
55	Failure to comply with the directions of FSO	Food Business Operator, Importer	2 Lacs		
56	Unhygienic or unsanitary processing or manufacturing of food	Manufacturer, processor	1 Lac		
57	Possessing adulterant	Manufacturer, Seller, Distributer, Storage, Importer	a. Adulterant is not injurious to health - 2 Lacs b. Adulterant is injurious to health- 10 Lacs		
58	Contraventions for which no specific penalty is provided	Any person	2 Lacs		
59	Punishment for unsafe food	Manufacturer, Seller, Distributer, Storage, Importer	a. No injury- 1 Lac b. non- grievous injury- 3 Lacs c. grievous injury - 5 Lacs	a. No injury- 6 months b. non-grievous injury- 1 Year c. grievous injury- 6 Years	
60	Punishment for interfering with seized items	Any person	2 Lacs	6 months	
61	Punishment for false information	Any person as per the directions under the FSS Act	2 Lacs	3 months	
62	Punishment for obstructing or impersonating a FSO	Any person	1 Lac	3 months	

Section	Offence	Liability	Penalty		
			Monetary (not exceeding in	Imprisonment (not exceeding)	Any Other
63	Punishment for carrying out a business without license	Any person, Food Business Operator	5 Lacs	6 months	
64	Punishment for subsequent offences	Any person	fine on daily basis - 1 Lacs		Twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.
65	Compensation in case of injury of death of consumer	Any person	Not less than five lakh rupees in case of death	Not exceeding 3 lakh rupees in case of grievous injury.	Not exceeding one lakh rupees in all other cases of injury.
66	Offences by Companies	Every person who at the time the offence was committed was in charge of a particular establishment/ branch, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Also if it is proved that the offence has been committed in connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer shall also be guilty of that offence and liable to be proceeded and punished accordingly.			
67	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	Importer			<p>a. In addition to any penalty to which he may be liable under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) and the Customs Act, 1962 (52 of 1962) be also liable under this Act and will be proceeded against accordingly.</p> <p>b. Any such article of food shall be destroyed or returned to the importer, if permitted by the competent authority under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or the Customs Act, 1962 (52 of 1962), or any other Act,</p>

5. Compensation in case injury or death of consumer (Section 65)

- (a) If any person whether by himself or by any other person on his behalf, manufactures or distributes or sells or imports any article of food causing injury to the consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the court to direct him to pay compensation to the victim or the legal representative of the victim, a sum—
- (i) not less than five lacs rupees in case of death;
 - (ii) not exceeding three lacs rupees in case of grievous injury; and
 - (iii) not exceeding one lacs rupees, in all other cases of injury:
- (b) The compensation will be paid at the earliest and in no case later than six months from the date of occurrence of the incident. Further, in case of death, an interim relief will be paid to the next of the kin within thirty days of the incident.
- (c) The Adjudicating Officer or the court may cause the name and place of residence of the person held guilty, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Adjudicating Officer or the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and will be recoverable in the same manner as a fine.
- (d) The Adjudicating Officer or the court may also,
- (i) order for cancellation of licence, re-call of food from market, forfeiture of establishment and property in case of grievous injury or death of consumer;
 - (ii) issue prohibition orders in other cases.
- (e) Offences by Companies (Section 66)

For the purpose of this Section,— (a) "company" means anybody corporate and includes a firm or other association of individuals; and (b) "director" in relation to a firm, means a partner in the firm.

- (i) When an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, is deemed to be guilty of the offence and will be liable to be proceeded against and punished accordingly
- (ii) Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:
- (iii) Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (iv) Notwithstanding anything contained above, if it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.