

FOOD SAFETY APPELLATE TRIBUNAL KASHMIR.

Present: Shujat Ali Khan

Appeal No.
30 / 2025

Date of Institution
09.10.2025

Date of Decision.
08. 09. 2026

1 M/s. Arif Enterprises,
Bulbul Bagh Bund near Tengpora Bridge, Srinagar,
Through its Proprietor,
Arif Bashir Shah,
S/o: Bashir Ahmad Shah
R/o: Bagat Barzullah, Srinagar
E-mail: sarif1770@gmail.com

Through Advocate Naveed Naseem (Counsel)

.....Appellant(s)

V/S

1. U.T of J&K through Food Safety Officer, Zone-III, Srinagar.
Through Advocate Sheikh Rizwan (Standing Counsel)

.....Respondent(s)

Appeal against the order dated **28-08-2025** passed by the Adjudicating Officer, Food Safety & Standards, Srinagar

J U D G M E N T

The appeal in hand has been filed by the appellant in terms of Section 70 of the Food Safety & Standards Act 2006 (hereafter referred as FSS Act 2006) questioning the correctness of the order dated 28-08-2025 passed by the learned Adjudicating Officer Food Safety & Standards, Srinagar, whereunder he has

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

imposed a penalty of Rs. 300000/- (rupees three lacs) against the appellant under Section 52 of the FSS Act 2006.

The case of the prosecution very precisely is that the Food Safety Department acting on a complaint received telephonically, raided the premises of Accused No. 1 'Abdul Hamid Kuchay' (Prop: Cold Storage Facility Zakura Srinagar) and found 60 packets of meat packed in polythene bags with outer cardboard cover, without mandatory label specifications as provided under Food Safety and Standards (Labelling and Display) Regulations 2020. During the investigation, the said accused could not justify the storage of product without label specifications, however, stated that the said consignment was supplied by Accused No. 2 namely Waseem Qureshi for marketing and to substantiate his stand he also provides some vouchers and bills to the investigators.

In this backdrop of the matter, the allegation level against the present appellant who has been arrayed as Accused No. 3 in the complaint are that the Accused No. 1 in his statement has alleged that the material which stands seized from the possession of Accused No. 1 was much more than the seized one, but some of the portion of the said material was taken away by the Accused No. 3 on the advice of Accused No. 2, by using load carriers and destroyed the same at his own, without informing the Food Safety Department. With this much of allegation, the investigation culminated against the present appellant (Accused No. 3) in the following terms:

".....that during investigation, Arif Bashir Shah accepted the claim made by the Accused No. 1 and in his written statement disclosed that after storing product in question that he destroyed it of his own which is unacceptable. Hence for storing product in question without label specification, Arif Bashir Shah was also included in the list of accused persons as Accused No. 3".

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8-9-26

On hearing the parties and examining their pleadings, it has come on fore that on recovery of 60 packets of raw meat from the possession of Accused No. 1, enforcement agency was informed that the rest of the product was removed by Accused No. 3 from the spot on the advice of Accused No. 2, which Accused No. 3 admitted. However, stated that since the said product was not fit for the human consumption hence he destroyed the same at his own. Seemingly on this statement of Accused No. 3, the enforcement agency was offended and declared his statement as "unacceptable" and was also booked for "Misbranding" along with the Accused No. 1 & 2 and finally got penalised under Section 52 of FSS Act 2006 at the hands of learned Adjudicating Officer.

In this backdrop of the matter one may very fairly ask, that if the appellant has neither manufactured, nor stored, nor sold, nor distributed the product, how he can be charged for the misbranding of that product particularly which was not in existence, when the spot was raided by the enforcement agency. One fails to understand that if some FBO receives a product for marketing from a supplier and on opening the consignment finds it not fit for human consumption and destroys the same at its own. What is the harm in that? Why the same is not "acceptable" to the Enforcement Agency. However, if the agency is of the opinion that the product has not been destroyed but concealed at some other place for marketing, the Enforcement Agency has ample powers under Food Safety laws to raid the suspected places and recover the material and put the investigation in motion.

Even the learned Adjudicating Officer has failed to appreciate the facts in its right perspective. The order impugned at its Para 'C' reads as under:

"C. Accused No. 03 destroyed the part of consignment as per his version on his own (for which no proof / evidence is available neither he produced anything whether he really disposed-off the consignment or he sold to the general public) without informing the Food Safety Department."

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

2/9/26

A plain reading of this part of the order impugned discloses that the present appellant (Accused No. 3) has been penalized heavily for destroying the part of the consignment without informing the enforcement agency. One may ask that if the same is taken as true how does it constitutes the offence of "misbranding" as envisaged under Section 3(1)(zf) of FSS Act 2006.

While discussing the other part of the same issue, the important question for determination arises, whether a penalty for 'Misbranding' under Section 52 of FSS Act 2006, can be legally allowed to sustain in the absence of physical seizure or physical recovery of the product by the enforcement agency?

The answer would be simply "No" because the statutory framework mandates for proof of misbranding. The learned FSO has to seize a sample in presence of the witnesses whereafter he has to seal it and mark the sample and also has to draw a physical label verification report in the particular format. Where a product has neither been seized nor recovered. The primary physical evidence required to demonstrate misbranding is completely absent. Allowing a conviction or penalty without the actual recovery of the suspected package opens the door to the arbitrary speculative penalisation.

The Hon'ble Supreme Court of India in Manikhiru Jhangani Vs State of MP SSC 2023, while speaking on the subject has reiterated that penalising an entity under Section 52 of FSS Act 20006 for misbranding requires strict conformity with the process under FSS Act 2006, where mandatory pre-requisites are bye-passed administrative penalties cannot be sustained.

Misbranding is an offence tide to the physical packaging, mandatory disclosures, net weight, batch details and visual representations on the product's container. Without seizing or recovering the physical item; the Adjudicating Authority has no material bases to conclude that misbranding occurred. Penalising

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

the appellant on mere allegations without a physical seizure is outside the scope of Section 68 of FSS Act 2006.

I agree with the arguments of the learned counsel of the appellant that the learned Adjudicating officer has mostly remained dependent on the supporting staff and has conducted the proceeding in a casual and careless manner. On examination of the record of the learned Adjudicating Officer called for, it is surfaced that during the entire proceedings of the case, the learned Adjudicating officer has not recorded even a single order in the minutes of the proceedings neither any order sheet has been prepared, nor any official record of proceedings is available on the file. However, I lay my hand on some of the notes prepared by some supporting staff to which the learned Adjudicating Officer has marked as "Yes please" even not under his hand but on a computerised sheet without his signatures which is a great procedural lapse and the bedrock of the judicial transparency.

Under Section 68(3) of FSS Act 2006, all proceedings before Adjudicating Officer are legally deemed to be judicial proceedings (within the meaning of Section 193 & 228 of IPC) and the Adjudicating Officer possesses the statutory powers of a civil Court. When an Adjudicating Officer fails to record order sheets, log minutes or document daily proceedings, it leads to severe legal defects and the final order becomes arbitrary, un-reasoned and unsustainable. An appellate body has no other option then to quash the order only on this defect for lack of evidentiary trail record.

Hon'ble Apex Court in Shiv Sagar Veg Restaurant Vs State Commissioner of Income Tax (2009) 9 SCC 618 has held that quasi-judicial Authorities are bound to record day to day proceedings on the order sheet. Passing a final order without documentary intermediate stages, appearances and opportunities given to the parties vitiates the entire process as it violates the principles of natural justice.

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

A judicial proceeding without an order sheet is an oxymoron. Recording daily order sheet, noting appearance, arguments and procedural steps is the bedrock of judicial transparency. The non-compliance of which vitiates the proceedings.

To appreciate the arguments of the learned counsel for the appellant that he was not provided sufficient time to make his representation as mandated under Rule 3.1.1(6), it is profitable to refer herein the said provision of law which reads as under:

Rule 3.1.1(6) of FSS Rules 2011

"For holding an inquiry for the purpose of adjudication under section 68 of the Act as to whether any person(s) has/have committed contravention of any of the provisions of the Act referred to in Rule 3.1.1(5) herein or the rules or regulations in respect of which the offence is alleged to have been committed, the Adjudicating Officer shall, in the first instance, issue a notice to such person or person giving him or them an opportunity to make a representation in the matter within such period as may be specified in the notice (not being less than 30 days from the date of service thereof)"

This provision mandates the Adjudicating Officer to provide at least 30 days time to the accused from the date of the service of notice for making his representation. But in the matter in hand not to talk of providing 30 days notice period, the learned Adjudicating Officer in violation of this mandatory provision of law has concluded the entire case within a span of one week. The record speaks that the complaint was filed for its adjudication on 22-08-2025 and the order impugned was passed on 28-08-2025. Certainly the appellant was deprived of filing the representation; consult the counsel and preparation of defence. Accordingly an order passed in violation of mandatory provision of law cannot sustain the litmus test.

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

Hon'ble Supreme Court in Uma Nath Pandey & Ors. Vs State of U.P & Ors. (2009 12 SSC 40) has held that "notice" and an "adequate time to reply" are two indispensable limbs of natural justice. If an Authority passes an order in haste without adhering to the prescribed time lines, the order becomes void - ab-initio due to procedural unfairness.

Depriving the accused of the 30 days window, prejudiced his right to collect the evidence, consult legal counsel and file a comprehensive defence / representation. Concluding an adjudication within a week's period demonstrates undue haste, procedural bias and non application of mind.

The most astonishing part of the adjudicating process is that the complaint stands filed before the learned Adjudicating Officer on 22-08-2025, whileas record speaks that the notices to the accused stand issued and dispatched on 01-08-2025 i.e. 21 days earlier to filing of the complaint and the same do not appear to be a typographical mistake. If for the sake of argument, the same is taken to be a typographical mistake and it is presumed that the notices have been issued on presentation of the complaint i.e. 22-08-2025 even then do not make any sense as the accused are required to present themselves before the Adjudicating Officer on 23-08-2025 i.e. very next day, which is a sheer violation and departure of Rule 3.1.1(6) referred herein above. This is how the cases of food safety department meet their fate at the adjudicating level.

Learned counsel for the appellant appears to be justified in submitting that the proceedings of the case have been conducted in a hotchpotch manner, as neither any fair opportunity of hearing has been provided to the appellant nor the facts of the case as projected in the complaint have been appreciated in their right perspective. On scrutiny of the record it appears that the complaint stands filed before the learned Adjudicating Officer for 'misbranding of product' as the product

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

was lacking the label specifications. However, the learned Adjudicating Officer has stepped ahead and branded the product as 'unsafe food' in the order impugned. The relevant para of the order impugned is reproduced as under:

".....Given the gravity of the offence, supplying and selling rotten meat which poses a direct and severe threat to the public health, a stringent penalty is warranted to the act as an deterrent. They cannot take people for a ride. Supplying rotten meat for human consumption is not unethical but poses a great threat to the health and lives of those who consume it."

Now the question arises that if the learned Adjudicating Officer reaches to the conclusion that the product in question is a rotten meat which poses a direct and severe threat to the public health and is not safe for human consumption then it certainly falls under the definition of 'Unsafe Food' and punishment for the same has been mandated under Section 59 of FSS Act 2006 not under Section 52 of FSS Act 2006 and in that eventuality the learned Adjudicating Officer has no jurisdiction to hear the matter and penalize the accused in terms of Rule 3.1(5) of FSS Rules of 2011. It is also not fair on the part of Adjudicating Officer that he brands product in question as "unsafe food" and then penalises the accused for misbranding.

A similar issue travel to the **Hon'ble Apex Court in Kiran Singh Vs Chaman Paswan AIR 1964 SSC 340**, and the Hon'ble Court observed that even if the Adjudicating Officer penalizes for misbranding, the recorded finding of "unsafe food" vitiates the proceedings because the adjudicating officer cannot act as both as Administrative Penalty Officer and a Trier of facts reserved for criminal courts.

Again in **State of Maharashtra Vs Syyed Hussain, Syyed Subhan, SSC 2018**, Hon'ble Supreme Court held that if the substance is found to be 'unsafe' or 'unfit' for human consumption, the Adjudicating Officer lacks jurisdiction to try the

matter or impose a civil penalty. The case must be send to Designated Officer for filing a criminal prosecution before the appropriate Judicial Magistrate.

Very recently in 2024, the Hon'ble Apex Court while examining the definition of 'unsafe food' under Section 3(zz) and its relationship with Section 59 of FSS Act 2006, affirmed that when food is injurious to health or rotten, the comprehensive statutory scheme under Section 59 of FSS Act 2006 applies exclusively over riding lighter civil penalty provisions. An officer cannot dilute an offence of "unsafe food" into a minor administrative violation like Misbranding to bypass the judicial trials.

In light of the above referred observations, an Adjudicating Officer while conducting an enquiry under Section 68 of FSS Act 2006 if reaches to the conclusion that a particular case is not a simple case of misbranding but a case related to the human health and brands it 'unsafe' for the human consumption. In that eventuality he loses the jurisdiction to further go ahead with the case and has no option then to return the same to the designated officer for filing it before the appropriate Authority but for doing so the Adjudicating Officer shall have sufficient evidence before him to brand a product as 'unsafe' particularly when the complaint is otherwise. The enforcement agency in the complaint has not even whispered about the unhealthy conditions of the product nor any evidence is collected by the learned Adjudicating Officer in this behalf. One fails to understand that how the learned Adjudicating Officer has come to the conclusion that the product which even has not been seized was rotten and unsafe for human consumption.

Another interesting aspect of the matter pertains to accused no. 2 namely "Waseem Qureshi who has been let free by the Adjudicating Officer on the pretext of non-availability of his address. Though the order impugned itself reflects complete address of the Accused No. 2 and the same is also available on the file.

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

01/09/24

The conclusion drawn by the learned Adjudicating Officer that the address was unavailable appears to be an assumption on the part of the learned Adjudicating Officer as neither any attempt has been made ever to issue notices / summons to the Accused No. 2 on the available recorded address nor any formal dispatch and official postal return with the remarks 'untraceable address' or 'incomplete address' has been received. Without sending a notice to the Accused No. 2 on the recorded address and assuming the insufficient address is fatal procedural defect. It was mandatory on the part of the Adjudicating Officer to issue the summons on the available address, receive the postal returns and thereafter direct the prosecution to provide the fresh address particulars of the accused. On the other hand acting on the presumptions, the learned Adjudicating Officer has exonerated the Accused No. 2 for want of address, closed the file and consigned the same to the Records with the following observation

"Additionally, complainant is directed to explore every possibility and provide full credentials of the Accused No. 2 so that he can be summoned before this court".

Now the moot question for determination before this Tribunal arises that once the case stands closed, final judgment stands announced and file stands consigned to Records, under which provision of law the notice can be issued to any of the accused on his fresh address? Undoubtedly, there is no such legal provision available under food safety laws which shall authorize the Adjudicating Officer to issue summons, to any of the accused after closing the case and having it consigned to records.

Hon'ble Apex Court in a similar situation has held in **Subodh S. Silaskar Vs. Jay Prakash M. Shah 2008 (13 SCC 689)** that before drawing any adverse inference

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

or closing proceedings due to non-traceability, the court must ensure that service was attempted at the available address on record.

Passing a final order, closing the case without ever attempting to issue notice / summon to accused on the available recorded address demonstrates gross inefficiency and non-application of mind by the Adjudicating Officer. He becomes "functus officio" and unable to reopen the case.

Hon'ble Supreme Court again in **State of Punjab Vs Devinder Pal Singh Bullar 2011 (104 SCC 700)** has held that once a court dispose of a matter finally it becomes "functus officio" it cannot pass subsequent orders or retain conditional jurisdiction to serve or alter its final judgment unless expressly provided by the statute.

In light of judgments rendered by the Hon'ble Apex Court in the above titled matters, the conclusion of the learned Adjudicating Officer that the address was unavailable or incorrect without ever issuing process / summons to the address already existing is illegal, unsustainable, arbitrary and a direct violation of natural justice.

Equally it is surprising to note that the prosecution has not challenged the order impugned, wherein proceedings against Accused No. 2 have been closed for want of address, whileas his full address particulars were already available in the complaint itself.

On perusal of the order impugned, it has come on fore that no enquiry has been conducted while disposing of the matter and imposing penalty on the accused persons, which the learned Adjudicating Officer was supposed to hold in the matter under Section 68 of FSS Act 2006, to ascertain as to whether any person

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/26

(s) has / have committed the contravention of any provisions of this act. The relevant Section reads as under:

Section 68(2) of FSS Act-2006:

"The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence".

Further Rule 3.1.1(5), (6), (7), (8) & (9) of FSS Rules- 2011 provide some guidelines to be followed while adjudicating the matters under FSS Act-2006 which are mandatory to be followed by the Adjudicating Officers.

The scope of enquiry as stipulated under Section 68 of FSS Act-2006 and Rule 3.1.1(5) was considered by **the High Court of Chhattisgarh in case title 'Ramakant Gupta Vs State of Chhattisgarh reported in 2016 (2) FSE, page No. 532,** wherein Hon'ble High Court has in very clear terms laid down that the learned Adjudicating Officer under FSS Act-2006 is required to make an enquiry before imposing penalty over the persons charged for violation of Section 26(2) of FSS Act-2006.

Applying the mandate of law laid down in this Authority and having regard to the provisions of FSS Act-2006 and rules made thereunder, it is evident from the record called for from the learned Adjudicating Officer that during the entire proceedings, neither any enquiry was conducted nor the procedure was followed for carrying such proceedings before awarding the penalty nor any record of the proceedings is available on the record. I agree with the learned counsel for the appellant that the matter has been handled in a very careless manner at the level of Adjudicating Officer and rules and regulations have not been followed while

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

8/9/24

disposing of the matter. Before announcing the order impugned, the learned Adjudicating Officer was mandatorily required to satisfy himself that the case is proved beyond any reasonable doubt against the accused then and only then he can impose the penalty.

Hon'ble Madras High Court in **R. Chandram and Ors. Vs Food Safety Officer and Anr. (WP No. 1827 of 2019)** while deliberating on this aspect emphasized that the Statutory Authorities under FSS Act 2006 must strictly adhere to statutory procedure and principles of natural justice. Non compliance to the mandatory procedural safeguards vitiates the proceedings.

Applying this mandate of law to the facts and the circumstances of the case in hand, it is evident:

1. That judicial proceedings have been conducted without maintaining any order sheet.
2. Statutory time period provided to the defence under Rule 3.1.1(6) of FSS Rules 2011 has been denied.
3. Entire proceedings stand completed within a period of 6 days against the mandate of law.
4. No enquiry has been conducted in the matter in terms of Section 68 of FSS Act 2006 and rules made thereunder.
5. No notice has been issued to the accused in terms of Rule 3.1.1(6) of FSS Rules 2011.
6. Exonerating an accused for want of address without issuing notice to him on the address provided.
7. Penalising a person for misbranding without physical recovery of the substance.
8. Issuing summon to the accused in absence of complaint.

Not only this but another glaring example of non-applicability of mind and carelessness at the hands of Adjudicating Officer emerged when on perusal of order impugned it has come on fore that the order impugned was announced on 28-08-2025 but the same was signed by the learned Adjudicating Officer on 22-09-

Presiding Officer
Food Safety Appellate
Tribunal Kashmir

09/26

2025. The question arises that if the order stands signed by the learned Adjudicating Officer on 22-09-2025 then who has announced the order on 28-08-2025, three weeks earlier to its signatures and consigned the same to the records.

I also lay my hands on a note prepared by the learned Adjudicating Officer on 30-08-2025 at 12:38 pm; wherein the appellant was asked to furnish the full particulars of the Accused No. 2. One fails to understand that if the order impugned was announced on 28-08-2025 and the case stands consigned to records on that day, then what made the learned Adjudicating Officer to draft an order on 30-08-2025 after announcement of the order impugned. Similarly another note was prepared by the learned Adjudicating Officer on 04-10-2025 at 05:23 pm i.e. after more than one month, after passing of the order impugned, wherein he has prescribed the amount of penalty on the accused. Again the question arises that if the order impugned was announced on 28-08-2025, how the matter again originated on 04-10-2025 before the learned Adjudicating Officer.

All this demonstrates either gross incapability or deliberate abuse of quasi-judicial powers at the level of Adjudicating Officer. Such railroading of judicial procedure erode public confidence in the administrative justice system which of course invite strictures against the Adjudicating Officer, which I refrain from at this stage. However being an appellate body observe that the officer needs sensitisation and some training of the Food Safety and Standards Act 2006 particularly of Section 68 of FSS Act 2006 with rules made thereunder, to prevent future procedural lapses and I leave it to the wisdom of Commissioner, Food and Drug Administration, J&K, who himself is well versed with the food safety laws and legal framework governing the field.

For the foregoing reasons, the appeal in hand is allowed. Consequently the order impugned dated 28-08-2025 passed by the learned Adjudicating Officer Srinagar not being in conformity with the law, is set aside only to the extent of

appellant herein namely M/s Arif Enterprises. The matter is remanded back to the learned Adjudicating Officer for fresh enquiry strictly in accordance with the provision of Section 68 (2) read with Rule 3.1.1 (5) (6) (7) (8) & (9) of FSS Rules 2011, to the extent of Accused No. 2 namely Waseem Qureshi who shall be summoned on the address available on the file. If the summons are received back unserved with the postal endorsement, in that eventuality the prosecution shall be asked to provide fresh address particulars of the accused. The accused shall be provided sufficient opportunity for filing his representation and preparing his defence. The learned Adjudicating Officer while conducting fresh enquiry in terms of Section 68(2) shall strictly adhere to Rule 3.1.1 (5-9) and Rule 3.1.2(6) of FSS Rules 2011 and shall also follow guidelines provided under Section 49 of FSS Act 2006. The record called for shall be send back to the learned Adjudicating Officer where it shall come up for fresh hearing on **20-09-2026**.

Copy of this order be communicated to the learned Adjudicating Officer and to the parties in terms of Rule 3.3.4 (2) of FSS Rules, 2011.

Copy of the order be also forwarded to learned Commissioner, Food & Drug Administration, J&K, for providing some training sessions to the learned Adjudicating Officer as discussed in the earlier paras of the order.

File be consigned to Records after due completion.

Announced:
08. 09. 2026

Verified
To be a True Copy

Verify Officer
U/S 70 Evidence Act

Presiding Officer
FSAT-Kashmir

8/9/26

Presiding Officer
Food Safety Appellate Tribunal
Kashmir
Presiding Officer
Food Safety Appellate
Tribunal Kashmir