

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 231 of 2020

BETWEEN: **RB PATEL GROUP LIMITED** a limited liability company duly registered under the Companies Act of Fiji and having its registered office at Centre Point Complex, Ratu Dovi Road, Laucala Beach Estate, Nasinu.

PLAINTIFF

AND: **CENTRAL BOARD OF HEALTH**

1st DEFENDANT

AND: **SUVA CITY COUNCIL**

2nd DEFENDANT

AND: **LAUTOKA CITY COUNCIL**

3rd DEFENDANT

AND: **LAMI TOWN COUNCIL**

4th DEFENDANT

AND: **NASINU TOWN COUNCIL**

5th DEFENDANT

AND: **NAUSORI TOWN COUNCIL**

6th DEFENDANT

AND: **SIGATOKA TOWN COUNCIL**

7th DEFENDANT

AND: **NADI TOWN COUNCIL**

8th DEFENDANT

AND: **LABASA TOWN COUNCIL**

9th DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Ms. L. Prasad for the Plaintiff
Ms. G. Naigulivu for 1st and 4th the Defendants
Mr N. Lagendra for 2nd and 3rd (on instructions) Defendants
Mr. A. Prakash for 9th Defendant.

Dates of Hearing: 8.10. 2024

Date of Judgment: 19.11.2024

Catch words

Food Safety Act 2003 Sections 2, 16, 17, 20- Health Licence- Food Safety Regulations 2009 Regulation 47- food establishment- Food Business Operations Health Licence Types- harmonizing -Food Process- Food Process Establishment- Health and Safety Risks- Supermarket- multiple licences for one outlet- licence issue to Each Food establishment- not for each outlet- no application of Business Licencing Act-

JUDGMENT

INTRODUCTION

- [1] This is an originating summons filed by Plaintiff seeking an interpretation of law on the licensing provisions of the Food Safety Act 2003 (FSA) and Food Safety Regulation. 2009.
- [2] At the outset due to Preliminary Objection raised regarding validity of the affidavit in support, by decision handed down by a brother judge on 3.5.2022 this action was struck off. This was due to striking off of the affidavit in support, without considering merits and this decision was appealed. Court of Appeal. On 30.11.2023, Court of Appeal set aside the said decision of 3.5.2022 and reinstated the affidavit in support and re-hearing of originating summons ordered.
- [3] This matter was allocated to me on 22.3.2024 and due to its inevitable delay in re-hearing and importance of the interpretation of legislation, priority given and parties who were represented, had filed submissions.
- [4] The legal issue before the court is whether Plaintiff is required to obtain multiple Health Licences depending on the 'food establishments' or type of ' food business operations ' it conducts on each retail outlet or it should be issued a one Health Licence which is categorized as 'other (not elsewhere specified)'.
- [5] Plaintiff was required to obtain several Health Licences after a survey of individual outlets depending on food business operation depending on manner in which food are offered to customers.
- [6] Plaintiff contends that under FSA and Food Safety Regulations 2009, it was required only for one type of Health Licence which is categorized as ID No 24 Other (not elsewhere specified) in respect of its every supermarket irrespective of the types of 'food business operations' conducts in such retail outlet.
- [7] This contention of Plaintiff is not only illogical but also defeat the very purpose of FSA and its Regulations. Supermarket by its nature may cater 'one stop

shop' for customers and the availability of food types and manner in which they are sold may vary. So by nature there are Health and Safety Risks that cannot be classified or regulated by one type of Health Licence for effective and meaningful regulation as to Health and Safety of public which also required to harmonize with workers safety requirements under Safety at Work Act 1996 in terms of Section 20(d) of FSA.

- [8] Supermarkets' scope had expanded leaps and bounds over the years , and some offer bakery, cafeteria, fish stall, butchery, non-prescribed drugs etc in Fiji and some countries even include Pharmacy (with prescribed drugs), prescribed cosmetics, Banking and other services. Such expansion of scope provide convenience for customers but at the same time cannot be excluded from supervision and regulations that are applicable for same type of business outside super market. If not an undue advantage in doing business can arise and may unduly affect, competition among same type of businesses
- [9] If Plaintiff being a supermarket excluded from regulation of types of 'food business operations' it would be discriminatory for similar businesses outside super market and the purpose of Health and Safety will be lost and public health is at risk including to workers in such workplaces.
- [10] Supermarkets are not a privileged businesses who can operate without regulation relating to what they offer to public and also the manner in which such food are offered. This is not confined to food but in this action, it only relate to food, in terms of FSA and Regulations made under it.
- [11] This only shows that irrespective to type of business operations conducted in supermarket for convenience of the customers or business reasons , such business operations are subjected to regulation so that 'fair trading practices' are promoted under FSA as its objective. This is important as food industry as a whole cannot cut corners or reduce cost at the expense of Health and Safety of public relating to food business operations.
- [12] As supermarkets, they should be role models for Health and Safety of 'food business operations' in retail business. They should set bench marks for other small and medium retail businesses to emulate, not to create, unintended health emergencies by bending the law or to circumvent such mandatory requirement thus, jeopardize public health and safety.
- [13] Super market industry is patronized by a large segment of public. If there is an issue relating to food, health and safety the impact on public is more .There is social responsibility as well as duty of care, for all supermarkets to offer food items in the safest possible manner, to eliminate preventable Health and Safety risks to public.

[14] So depending on food business operations in a supermarket or other retail outlet, multiple licences are issued under Food Safety Regulations 2009. Supermarket is comprised of number of 'food establishments' depending on the number of food business operations conducted. So such 'food establishments' must obtain and comply to the special conditions attached to such licences.

FACTS

[15] Plaintiff is seeking the following Orders:

- “1. AN ORDER and/or a Declaration that the Health Licence Type and Fee payable by the Plaintiff for its respective supermarkets to the Defendants pursuant to the Twenty-Sixth Schedule of the Food Safety Regulations 2008 shall be for "License Type ID 24 — Other (not elsewhere specified)" only and no other health licence types or health licence fees in respect of its supermarkets situated within the Defendants' respective boundaries.
2. AN ORDER that the Defendants by themselves, their respective servants and/or agents be permanently restrained from demanding payment of other health licence types or fees from the Plaintiff apart from Health License Type ID 24 —Other (not elsewhere specified), and not to interfere in any manner whatsoever in the Plaintiffs day to day running of its supermarket activities situated within the Defendants' respective boundaries.
3.”

[16] Due to delay of this hearing order 3 sought in the originating summons became redundant and not pursued at hearing. Plaintiff was subjected to criminal prosecution for failure to obtain specified licences under FSA and this had triggered an issue as to the interpretation of FSA.

[17] The issue before the court is whether Plaintiff is liable for several Health Licences depending on types of 'food establishments' operated within one premises or supermarket.

[18] Plaintiff is a legal entity that operates chain of supermarkets in Fiji. It is subject to FSA. All the supermarkets operated by Plaintiff as well as other operators are not identical as to the type's food business operations. Each outlet is assessed individually and each and every supermarket outlet periodically inspected and required to apply for multiple categories of Health and Safety Licences in terms of Food Regulations 2009.

- [19] The 1st Defendant is a statutory body constituted under the Public Health Act 1935, and is the supervisory and regulatory body appointed under the FSA and its regulations that are tasked with, inter alia, the issuing of health licences to the Plaintiff's respective supermarket premises located in the other Defendants municipalities.
- [20] The other Defendants are city and town councils constituted under the provisions of the Local Government Act and are the local food authorities under the FSA and Regulations made under it and Section 10 of Public Health Act 1935.
- [21] The Plaintiff has since 2014 contested the licensing of multiple 'food business operations' in one retail outlet by Defendants and its agents, the food authorities.
- [22] The Communications to this effect are found in the affidavit in support and this was after Supreme Court decision in Suva City Council v R B Patel Group Ltd [2014] FJSC 7; CBV0006.2012 (17 April 2014).
- [23] Defendants are of the position that due to the multiple food operations carried on by the Plaintiff require multiple license under FSA.
- [24] Plaintiff since 2014, contended that as its business entity is that of a Supermarket, it ought only a apply and be granted one type of health license as 'supermarket' under unspecified food operation found in ID 24 in Schedule 26 of Food Regulations 2009 which is unclassified food business operation.
- [25] The Plaintiff further contends that the interpretation, application and procedures undertaken by the Defendants in the issuance of the health licenses are not in accordance with the procedure set out by the FSA and its regulations.

Is Plaintiff as Supermarket required to obtain several Health Licences under FSA?

- [26] The preamble of the FSA states
- "An Act to Promote Public Health and Safety with regard to Food, To Regulate the Preparation, Sale and Use of Food, to assist Consumers Make Informed Choices on Food, To Promote Fair Trading Practices In Relation To Food And For Related Matters"** (emphasis added).
- [27] Preamble states that the purpose of the FSA is to '*Promote Public Health and Safety with regard to Food*'. So the contention of Plaintiff clearly misfits to the primary objective of the legislation and will defeat the purpose of FSA.

[28] Apart from that if contention of Plaintiff is accepted , it will be discriminatory and also will not '*Promote Fair Trading Practices in Relation to Food*' and other related matters. That will not only affect Health and Safety but also adversely affect other business operators engaged in similar business.

[29] All health and safety measures relating food business operations incur additional costs thus more investment for health and safety of the public, which is a responsibility of food business operators, in terms of FSA. This responsibility cannot be neglected irrespective of several food business operations conducted under one roof.

[30] It is known fact that all supermarket outlets are not identical as to layout space and type of food offered to public. Accordingly health and safety risks are not identical for to general public. Similarly , even other grocery shops which are not classified as 'supermarkets' conduct variety of food operations, depending on many factors such as location , consumer preferences, supply chain and storage , space available for sales , cost as well as margin of profit etc. These are not food specific factors, but suffice to show there are factors affecting the selection of different food operation business in one or more of retail outlets.

[31] In a supermarket the variety of food and services offered can differ significantly. So there is a requirement to assess types of food establishments that are operational in one or more such premises or 'food business operations' for which classification of Health Licences. If not health and safety relating to food business operations , can be compromised and public health will be risked due to contamination of food with pathogens and other type of contaminants which are harmful for Public Health. This risk is more in multiple food business operations than one type of food business.

[32] The power to grant licences is vested with the first Defendant in terms of Section 17 of FSA

"Power to grant licences

17. (1) The Board **may issue different types of licences** as prescribed by regulation in respect of the **different types of food establishments**.

(2) The Board may issue a licence with or without conditions.

(3) The power to issue a licence under this Act includes the power to refuse to issue a licence, or to vary, suspend, or cancel a licence.

(4) **A person may apply for one or more licences in respect of a food establishment.**

(5) The owner of a licensed food establishment must comply with such conditions imposed by the Board and any other conditions specified in the licence.

(6) A person who fails to comply with any of the conditions of a licence imposed by the Board or prescribed by regulations commits an offence.”(emphasis added)

- [33] In terms of Section 17 of FSA first Defendant can issue ‘*different types of licences*’ but this needs to be ‘*prescribed by regulation*’. So first Defendant is empowered under the statute to issue different types of licences depending on the ‘*different types of food establishments*’. These types of licences must be prescribed by regulation.
- [34] There is no requirement to issue customized licences depending on ‘food establishments’ operated in one location or retail outlet. So whether it is supermarket or other retail outlet licences are issued for distinct ‘food establishment’ under Section 17 of FSA.
- [35] So Plaintiff cannot argue that it as Super Market is always entitled to be issued only one type of licence as the plain language of the Act had empowered first Defendant to classify ‘food establishments’ under FSA and subsidiary legislation. Such classifications are published in terms of ‘food business operations’ conducted irrespective of locality.
- [36] Plaintiff’s argument is that as supermarket it is involved in number of food business operations and cannot be required to obtain licences for each ‘food business operations’ within one outlet.
- [37] Nothing in Section 17 of FSA state that only one type of food licence can be issued when there are more than one category of food establishment operated in one premises or one outlet, be it a supermarket or otherwise. There can be ‘different types of food establishments’ in one supermarket or other retail outlet, depending on business operations.
- [38] Apart from retail business delivery services and ‘food processing establishment’ are also considered as distinct food establishments. As a supermarket or large retail business , it may be more efficient and convenient for vertical integration, of supply chain, so delivery and ‘food processing establishments’ may be under a supermarket but such activities are distinct ‘food establishments’ in terms of FSA.
- [39] There can be different ‘food establishments’ within one business premises eg shopping complex or mall, department store may include one or more such ‘food business operations’. It can also be that in one retail outlet or supermarket

can operate several 'food business operations'. It is axiomatic that supermarket by its nature will invariably operate several or all such operations, but such activities require separate and distinct regulation thus attracting different conditions.

[40] The classification food operations vary and variety of food items and the manner in which they are sold or 'processed' are also different depending on many factors.

[41] The distinction in interpretation provision of FSA as to '*food processing*' and '*food processing establishment*' is clear. Plaintiff as supermarket invariably involved in 'food processing' according to following definition, in Section 2 of FSA;

"food processing" means the **mixing, heating, separating, cooling, freezing**, fermenting, preserving, **or** reducing in size of one or more edible components to produce products fit for human consumption"

[42] This is clearly distinguished from 'food processing establishment' where food is not provided directly to consumer, and it is defined as

"food processing establishment" means a commercial operation that manufactures, packages, labels, or stores food for human consumption **and** does not provide food directly to a consumer;

[43] Supermarket may or may not have its own 'food processing establishment' but supermarkets invariably involved in 'food processing' in terms of FSA. Eg freezing, cooling, reducing size, etc for consumption.

FOOD ESTABLISHMENT

[44] Section 16 of FSA states

"Licences for food establishments

16. (1) No person must operate a food establishment unless the establishment is licensed under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to the prescribed penalty."

[45] The word 'food establishments' defined in Section 2 of FSA and it reads;

"food establishment" **means** any operation or any business entity that stores, prepares, packages, serves, vends or provides food for consumption and **includes** food processing establishments and delivery services, and establishment has a corresponding meaning;"(emphasis is mine)

[46] So the classification of 'food establishment' is not based on location or manner of layout at all, but on the manner of operation relating to food such as storage, preparation, packaging, vending , serving and offering for consumption etc.

[47] By the definition of 'food establishment' all or most of supermarket chains including Plaintiff, will store, prepare package, and serves variety of food items. Each and every such operation may or may not carry a different license, but depending on the type of food and other factors including business practices and environmental factors, first Defendant may classify such food establishment in respect of Health and Safety of the public. There are twenty three specific licences and anything that cannot be classified under said twenty three specific licences are classified as 'other' under Licence Type ID 24, in terms of Food Safety Regulations 2009.

FOOD BUSINESS OPERATIONS

[48] Section 47 of Food Safety Regulations 2009 , Part IX, which deals with licences deals with 'Premises engaged in food business operation 'and it states

"Premises engaged in food business operations

47.-(1) All premises where food business operations are carried out shall be currently licensed with a **health license issued by Board** in respect of such premises in accordance with Part 3 sections 16 and 17 of the Act.

(2) No person shall **operate a business if the premises are not licensed** or if the license has been suspended or revoked under section 20 of the Act.

(3) No person shall for the purpose of the sale or advertisement of the food to which the license applies refer to the license by any such descriptions (other than the special designation authorized by the license) as is likely to suggest that it is tested, approved or graded by any authorized officer.

(4) The holder of the health license shall -

(a) keep accurate record of the quantities of the raw materials and ingredients and products purchased and products sold and of the names and addresses of the persons from whom the raw materials and ingredients

and products were purchased and to whom products were sold, except where the products are directly sold to the consumer;

(b) retain such records as referred to in sub-regulation (4) a. for a period of six months longer than the expiration date of the product or the expected durability of the product, where an expiration date is not defined;

(5) Notwithstanding the generality of sub-regulation (4) food business operators in possession or health licenses for market stalls or mobile or temporary stalls or village retail only outlets shall not be required to maintain written records but shall be able to identify their suppliers to authorized officers upon request.

(6) Application for the issue or renewal of a health license shall be made in writing on the form contained in the Twenty-fifth Schedule.

(7) Applications under sub-regulation (6) shall be lodged, along with the fee prescribed in the Twenty-sixth Schedule, with an authorized officer of the food authority in which the premises are located.

(8) Once the application and fee specified in sub-regulation (7) have been provided, an **authorized officer of the food authority** in which the premises are located shall cause an inspection to be made to assess compliance with section 20 of the Act and that the food business operations to be conducted, or being conducted, on the premises comply with all requirements of the Act and its Regulations.

(9) Upon completion of the inspection specified in sub-regulation (8), authorized officer of the food authority in which the premises are located shall send the recommendations thereon to the Competent Authority and the Board with the application form and fee and any such report as may be necessary.

(10) A health license shall be in the form contained in the Twenty-seventh Schedule.

(11) Such further particulars shall be given by the applicant as the Board may reasonably require.

(12) The Board may refuse to issue or renew any health license -

(a) in respect of any application or of any premises which does/do not conform with the requirements of the Act and its Regulations; or

(b) of any applicant who during the period of twelve months immediately preceding the date of application for such issue or renewal had been

convicted on at least two occasions of offences against the Act and its Regulations.

(13) A health license shall, unless revoked or suspended, remain in force until 31 December next following the date on which it is expressed to come into force.

(14) The Board shall cause to be kept a register of health licenses issued, renewed, suspended, revoked and transferred.

(15) The Board may, on application in writing of the licensee, transfer the license to another person by endorsing thereon the name of the transferee and such particulars as may be necessary, consequent upon the transfer, provided that the Board may refuse to transfer a license to any person who during the period of twelve months immediately preceding the date of application for such transfer has been convicted on at least two occasions of offences under the Act and its Regulations.

(16) If it appears that any premises, licensed by the Board to carry out any food business operations, are not maintained, kept or constructed in accordance with the provisions of these Regulations or the business operations on the premises do not otherwise comply with the Act and its Regulations, a food authority or the Board may order a business to close in accordance with section 19 of the Act, until the premises and food business operations comply with the Act and its Regulations.

(17) If it appears that any premises licensed by the Board to carry out any food business operations, are not maintained, kept or constructed in accordance with the provisions of these Regulations or the business operations do not otherwise comply with the Act and its Regulations, the Board, after giving due notice of its intention to do so, and of the grounds of such intention, to the licensee, and after affording the licensee a reasonable opportunity of remedying any breach of the Regulations specified in such notice, may, on being satisfied that any such breach has not been remedied, revoke the license.

(18) The Board shall give notice in writing of such revocation and of the date thereof to the licensee.“ (emphasis added)

[49] Accordingly ‘Fee for Food Business Operations Health License’ are determined in terms of the Regulation 47 (7) and twenty sixth schedule deals with that.

[50] Schedule twenty six is reproduced below;

SCHEDULE 26
(Regulation 47)

FEE FOR FOOD BUSINESS OPERATIONS HEALTH LICENCE

Licence ID	Licence Type	Licence Fee
1	Catering premises	\$400
2	Catering premises (school)	\$100
3	Mobile or temporary small scale catering	\$50
4	Bakehouse	\$100
5	Abattoir	\$800
6	Butcher shop	\$200
7	Meat and meat product processing	\$800
8	Fish and fisheries product processing	\$800
9	Milk and milk product processing	\$800
10	Poultry and poultry product processing	\$800
11	Egg and egg product processing	\$800
12	Food processing (general)	\$100
13	Food packing only	\$100
14	Food storage only	\$100
15	Food distribution only	\$100
16	Packaged water processor	\$400
17	Packaged ice processor	\$50
18	Retail only	\$200
19	Retail only (school/village)	\$50
20	Retail and catering (eg retailer with fast food counter)	\$400
21	Importer	\$800
22	Exporter	\$800
23	Market places stalls	\$50
24	Other (not elsewhere specified)	\$200

[51] From the above classification of business operations it is impossible to categorize a food business operation such as Plaintiff as 'super market' in terms of Regulation 47 for Health Licence. Such licence may also have its own disadvantages as entire supermarket operation will come to a standstill due to a defect or deficiency in one food business operation. For example if the

catering premises in supermarket found wanting operations of supermarket cannot operate.

[52] Plaintiff cannot state that its multiple food business operations covered under classification ID 24 which is clearly stated as 'Other (not elsewhere specified)'. Such an interpretation will defeat the very purpose of classification of food business operations and causes Health and Safety risks to general public including to its customers. If a retail entity is engaged in more than one category under Schedule 25 of Food Safety Regulations 2009 separate licenses for such activities are needed.

[53] The factors to be considered before issuance of licenses are stated in Section 20 of FSA and it states

“Factors Board must consider before issuing licences

20. The Board must not approve an application for a licence in respect of a proposed food establishment unless it is satisfied that-

(a) the **proposed plan** for the food establishment has been approved by the relevant local authority;

(b) the proposed plan for a new, expanded or altered food establishment has been approved by the relevant local authority;

(c) the new, expanded or altered food establishment has been constructed according to the proposed plan earlier approved by the relevant local authority;

(d) the proposed food establishment complies with health and safety standards under the [Health and Safety At Work Act 1996](#) and any relevant regulations made under that Act; and

(e) any other prescribed requirements or conditions are complied with.”(emphasis added)

[54] Depending on 'food business operations' classified under Food Safety Regulations 2009 there is requirement for distinct plan for such operations and such plan needs to comply with Health and Safety at Work Act 1996 , which determines safety standards specified for such operation. So the workers safety are also considered as a factor , hence FSA act and its licences needs

to be harmonized with safety standards for each food business operation conducted.

[55] It is clear when one premises engage in several types of 'food business operations' and, the health risks are more compared with one type of 'food establishment'. The risk of contamination of food from pathogens as well as from other chemical substances are more. Eg Butchery, fish stall and also catering can be under same enclosure with close proximity. So there is a greater danger of Health and Safety risks from contamination of food hence closer monitoring and constant evaluation of emerging health risks are essential in order to prevent health emergencies which are preventable.

[56] So the contention that Plaintiff should be issued with one type of licence is without merit. When one retail outlet conducts several food business operations under twenty three such specified classifications, multiple licences are required. Unspecified food business operation is required to obtain a licence under 'other'. Plaintiff cannot seek regulation under said category when there are identifiable 'food business operations'.

[57] Plaintiff in the affidavit in support had annexed Supreme Court judgment of Suva City Council v R B Patel Group Ltd [2014] FJSC 7; CBV0006.2012 (17 April 2014). In the submission again relied on this judgment. This judgment supports Defendants as it had expressly excluded application of the ratio in the said case to FSA. This is found in following passage (paragraph 48 of judgment), which stated,

"It manifest that the expenses involved in obtaining the necessary certification of compliance from the National Fire Authority and the requisite licence from the Central Board of Health are recoverable under the relevant legislation and subordinate legislation from the applicant for such certification or licence, and not from the licensing authority constituted under the Business Licensing Act, which in this instance is the Suva City Council.

[58] So Suva City Council v R B Patel Group Ltd (supra) cannot be applied to FSA and the Regulations under which Plaintiff is required to obtain different types of licenses due to type of business operation that involve. A plain reading of the said classification clearly shows that if Plaintiff is an importer or exporter two separate licences are a required for obvious reasons. Similarly, each business operation involved in the categorization of each 'food establishment' required separate licence and invariably such licence also will require conditions which may not be identical. Also such distinct 'food establishment' may also require different monitoring and evaluation processes.

[59] The Supreme Court decision of Suva City Council v R B Patel Group Ltd (supra), dealt with statutory interpretation wherein some of At paragraphs 62 — 64 of the Judgement, His Lordship Justice Marsoof stated

62. Generally speaking, there are two schools of thought in relation to the interpretation of statutes, the literal and the purposive. The literal approach, which was defined and explained by Higgins J. in Amalgamated Society of Engineers v Adelaide Steamship Co Ltd [1920] HCA 54; (1920) 28 CLR

129, 161-2, seeks the intention of the legislature through an examination of the language in its "ordinary and natural sense even if we think the result to be inconvenient or impolitic or improbable". This method was also preferred by McHugh J. in Hepples v FCT [1992] HCA 3; (1991-1992) 173 CLR 492, 535-6, even if it produces "anomalies or inconveniences". Courts have stressed that they "cannot depart from the literal meaning of words merely because the result may seem unjust" (CPH Property Pty Ltd & Ors v FC of T 98 ATC 4983, 4996 per Hill J.) or even "lead to a manifest absurdity" (R v The Judge of the City of London Court [1892] 1 QB 273, 290 per Lord Esher).

63. An alternative method of interpretation applied by the courts is known as the purposive approach, which is an approach to statutory interpretation in which the courts interpret legislation in the light of the purpose for which it was enacted and which promotes the purpose of the legislation. This approach recognizes that "statutory interpretation cannot be founded on the wording of the legislation alone"(per Lacobucci j in Re Rizzio & Rizzo Shoes Ltd., [1998] 1 S.C.R. 27, at paragraph 21) and permits courts to utilize extraneous pre-enactment material such as cabinet memoranda, draft bills, Parliamentary debates, committee reports and white papers. The purposive approach was explained by Kirby J in FC of T v Ryan, (2000) 42 ATR 694, 715-716, in the following manner:-

"In this last decade, there have been numerous cases in which members of this court ... have insisted that the proper approach to the construction of federal legislation is that which advances and does not frustrate or defeat the ascertained purpose of the legislature ... even to the point of reading words into the legislation in proper cases, to carry into effect an apparent legislative purpose ... This court should not return to the dark days of literalism."

64. Somewhere between the strictly literal method of interpretation and the purposive approach to interpretation lies the "golden rule", which was clarified by Viscount Simon LC in his judgment in Nokes v. Doncaster Amalgamated Collieries Ltd. [1940] 3 All ER 549 at 553 as follows:-

"The golden rule is that the words of a statute must prima facie be given their ordinary meaning. We must not shrink from an interpretation that which will reverse the previous law, for the purpose of a large number of our statute law is to make lawful that would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow.... At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of legislation, we should avoid a construction that would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

[60] In this instance there is no requirement to provide a strained meaning to FSA and Food Safety Regulations 2009 , so as to defeat the purpose of FSA. So the plain meaning of FSA and Food Safety Regulations 2009 requires all distinct food business operations to obtain separate licences irrespective of location of such operation in one place or scattered in different locations. As stated earlier Health and Safety risks are more when such entities are in close proximity than in several places, hence separate licencing is a mandatory requirement and such operations should also be monitored or supervised.

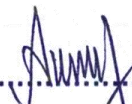
CONCLUSION

[61] Plaintiff 's contention in originating summons neither supported by any cannon of law or Supreme Court judgment of Suva City Council v R B Patel Group. Plaintiff being a supermarket cannot be excluded from its different types of 'food establishments' categorized in terms of Schedule 26 of the Regulations under FSA. Supermarkets are not a privileged category of business who can violate and or excluded from the Regulations made under FSA. Health safety Licence is a paramount requirement for elimination of preventable Health Risks to Public including and not limited to customers as well as to other stake holders. Originating summons struck off. Considering the important legal interpretation and history of the action no cost ordered.

FINAL ORDERS:

- a. Originating summons struck off.
- b. No Cost.





Deepthi Amaratunga
Judge

At Suva this 19th November, 2024.

Solicitors

Sherani & Co. Lawyers
AG's chambers
Gordon & Co. Lawyers
Lajendra Lawyers
Alvin Prakash Lawyers