

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2665/2010 & CM APPL 5305/2010

AMA HOSPITALITY PVT LTD Petitioner
Through Mr. M.L. Choudhary, Advocate

versus

GNCT OF DELHI AND ANR Respondents
Through Mr. N. Waziri, Standing Counsel
for GNCTD.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER
03.12.2010

1. The short question that arises for determination in the present writ petition is whether by selling an eatable, a brownie to be precise, in a paper wrapping, the Petitioner has violated Section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985 ('Act').

2. The Petitioner is a company engaged in the business of selling fast food under the name and style of 'Bagels and Brownies'. The fast food sold by the Petitioner, like brownies, cakes, muffins, cookies etc. are prepared and served across the counter. These fast food products are pre-cooked. They are then combined at the outlet and heated before being sold to the customers at the outlet, with the choice of hot or cold filling. If the customer does not wish to consume the product at the outlet itself but wishes to 'take away', it is then placed in a

paper bag or wrapped in paper in a loose form, to enable the customer to carry it with him without damaging the product. According to the Petitioner, in the latter circumstance, it is not possible for the wrapper to display any of the details as required under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 ('Rules').

3. On 26th September 2009 the Inspector Legal (Metrology), Government of NCT of Delhi visited the Petitioner's outlet at Malviya Nagar. He purchased a brownie and stated that he wished to take it away. It was then given to him in a paper wrapper. The Inspector informed the employee at the outlet that since the brownie had been wrapped and given to him for being taken away, it should have displayed the weight and other details as mandated by the Rules. This was followed by a notice dated 13th November 2009, received by the Petitioner on 23rd November 2009 alleging that the Petitioner had violated Section 33 and was held guilty under Section 51 of the Act. A penalty of Rs. 5,000/- was levied for contravention of the provisions. A second notice was sent on 16th December 2009.

4. The present writ petition challenges the said two notices. By an order dated 21st April 2010 this Court had, while directing notice to issue in the writ petition, directed that no coercive steps be taken pursuant to the impugned notices dated 13th November 2009 and 16th December 2009.

5. This Court has heard the submissions of learned counsel for the parties.

6. On the face of it, it appears that where commodities like eatables are sold at an outlet across the counter, and when the consumer wishes to take it away, are placed in a paper wrapper, such commodities cannot answer the description of a ‘commodity in a packaged form’ as defined in Section 2 (b) of the Act, which reads as under:

“(b) **Commodity in packaged form** – means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail.”

7. The wrapper is a loose one and the eatable, being a perishable commodity with a short shelf life, is expected to be consumed not very long after the purchase. In the very nature of such transaction, the paper wrapper only provides a convenient means of ‘take away’. It is not intended to be a ‘packaging’ of a durable nature.

8. Neither the Act nor the Rules define the word ‘package’. Rule 2 (p) of the Rules defines “retail package” to mean “the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein”. Such ‘package’ would have to be something of a durable nature, given the type of commodity. In the context of an eatable, a ‘package’ would have to preserve the commodity for a period longer than the time within which it should be consumed. In the context in which the Petitioner’s brownies are sold as a fast food, in a paper wrapper, such wrapper

does not fit the definition of a 'retail package' under Section 2 (p) of the Rules. The 'fast food' is meant to be consumed shortly after its purchase. When it is sold across the counter, it is not handed over in a 'packaged' form. This perhaps explains the exemption granted under Rule 34 (d) of the Rules to fast food items from the applicability of the Rules.

9. For the aforementioned reasons, the impugned notices dated 13th November 2009 and 16th December 2009 issued by the Respondents to the Petitioner are hereby quashed. The writ petition is allowed in the above terms. The pending application is disposed of.

10. Order be given dasti.

S. MURALIDHAR, J.

DECEMBER 03, 2010
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