

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: December 01, 2010

+ **CRL.M.C.2636/2008 & CRL.M.A.9737/2008**

M/S. HINDUSTAN UNILEVER LTD. PETITIONER
(FORMERLY KNOWN AS HINDUSTAN LEVER LTD.)

Through: Mr.R.N.Mittal, Sr. Advocate with Mr. Subhash Gulati, Ms. Sima Gulati, Ms. Rohina Nath, Mr. Satish Solanki, Mr. Tahir Nizami, Ms. Ruchica Arora, Mr. Manoj Kumar, Mr. Rahul Parasar, Mr. Sugamburi & Ms. Nimisha, Advocates.

Versus

STATE (NCT OF DELHI) & OTHERS RESPONDENTS

Through: Mr.Pawan Bahl, APP.
Mr. S.D.Sah, Proxy Adv. for Mr. G.P.Singh, Advocate for the respondents No. 4 & 5.
Ms. Ruchi Kapur, Advocate for the respondent No. 18/Himalyan Frozen Foods Ltd.

WITH

CRL.M.C.2783/2009 & CrI.M.As. 9410/2009 & 9582/2009

M/S. HINDUSTAN UNILEVER LTD. PETITIONER
(FORMERLY KNOWN AS HINDUSTAN LEVER LTD.)

Through: Mr.R.N.Mittal, Sr. Advocate with Mr. Subhash Gulati, Ms. Sima Gulati, Ms. Rohina Nath, Mr. Satish Solanki, Mr. Tahir Nizami, Ms. Ruchica Arora, Mr. Manoj Kumar, Mr. Rahul Parasar, Mr. Sugamburi & Ms. Nimisha, Advocates.

Versus

STATE (NCT OF DELHI) & OTHERS RESPONDENTS

Through: Mr.Pawan Bahl, APP.
Ms. Ruchi Kapur, Advocate for the respondent-Himalyan Frozen Foods Ltd.

WITH

Crl.M.C. 1142/2010 & Crl.M.A. 4059/2010

RAMA HARZAI

....PETITIONER

Through: Mr.R.N.Mittal, Sr. Advocate with Mr. Subhash Gulati, Ms. Sima Gulati, Ms. Rohina Nath, Mr. Satish Solanki, Mr. Tahir Nizami, Ms. Ruchica Arora, Mr. Manoj Kumar, Mr. Rahul Parasar, Mr. Sugamburi & Ms. Nimisha, Advocates.

Versus

STATE (THROUGH DEPARTMENT OF PFA)

....RESPONDENT

Through: Mr.Pawan Bahl, APP.

&

Crl.M.C. 1268/2010 & Crl.M.A. 5157/2010

M/S. SACHDEVA ENTERPRISES & ORS.

....PETITIONERS

Through: Mr.R.N.Mittal, Sr. Advocate with Mr. Subhash Gulati, Ms. Sima Gulati, Ms. Rohina Nath, Mr. Satish Solanki, Mr. Tahir Nizami, Ms. Ruchica Arora, Mr. Manoj Kumar, Mr. Rahul Parasar, Mr. Sugamburi & Ms. Nimisha, Advocates.

Versus

STATE (THROUGH DEPARTMENT OF PFA)

....RESPONDENT

Through: Mr.Pawan Bahl, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Through these petitions, the petitioners M/s. Hindustan Unilever Ltd., M/s. Rama Harzai and M/s. Sachdeva Enterprises have sought quashing of respective complaints filed against them, being complaint cases No. 59/PF/DA/08, CC No. 1854/2009, CC No. 1944/2009 & CC No. 1961/2009, all under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act') pending in the court of learned Metropolitan Magistrate, New Delhi and also impugned orders respectively dated 01.05.2008, 02.05.2009, 16.09.2009 & 14.10.2009, issuing processes against the petitioners as also the proceedings emanating from the complaints.

2. Briefly stated, the facts leading to filing of these petitions are that on 10th May, 2005, 18th April, 2006, 24th May, 2006 and 07th November, 2006, the concerned Food Inspectors purchased samples of 'Kissan Tomato Ketchup' for analysis from the premises of M/s. Nut and Cookies, Shop No. G 24/1, Rajouri Garden, New Delhi; M/s. Shangrila Chinese Food (Kitchen of Golden Dragon Restaurant), RBI Colony, Outer Ring Road, Hauz Khas; M/s. Modern Store, 42, East Avenue Road, East Punjabi Bagh, New Delhi and from Sh. Ravinder Kumar, nominee of M/s. Intercontinental, The Grand (a unit of Bharat Hotels Ltd.), Barakhamba Avenue, New Delhi respectively. Those samples were sent to Public Analyst and as per the reports of Public Analyst, the samples were found to be misbranded because the label declared "Best Before" in a misleading manner, though the samples conformed to standards. As per the report of the Public

Analyst, the label on samples declared “Best before 12 months from manufacture” but the date of manufacture was not mentioned on the label, though the date of packaging was given.

3. Though several grounds for quashing of complaints have been taken in respective petitions, learned Sh. R.N.Mittal, Sr. Advocate appearing for the petitioners, has pressed for only two grounds. His first contention is that as per the report of the Analyst, date of packaging of Tomato Ketchup is mentioned as March 6, 2006, which date obviously has to be the date of manufacture. Learned Senior Counsel submitted that the label describes that the contents of the bottle are best for use before the expiry of 12 months from the date of manufacture, therefore, the message is clear to the customer that the Ketchup in the bottle is best for use within 12 months from the date of packaging, as such, there is no misleading or misbranding of label. Secondly, it is submitted by learned Senior Advocate that during the period in which respective samples were taken by Food Inspector, there was a policy of respondents in existence and as per the aforesaid policy, being policy No. F6(228)/85/ENF/P.F.A. dated 20.09.1985, in the cases of misbranding of label only, the department was required to give a warning to the defaulter before launching prosecution and prosecution could be launched only if the defaulter continued with the default after the warning, provided the sample was found up-to the standard. Learned Senior Counsel contended that in the instant cases, as per the report of Chemical Analyst, the samples conformed to the standard, as such, if at all it was a case of misbranding, the department, instead of launching the prosecution of the petitioners in complaint cases

No. 59/PF/DA/08, CC No. 1854/2009, CC No. 1944/2009 & CC No. 1961/2009 ought to have brought the default to the notice of the offenders before launching the prosecution and the prosecution could only be lodged in the event of default after the warning.

4. It is also contended that this very policy was considered in the matter of **S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Govt. of NCT of Delhi** in Crl.M.C. No.3307/2007, wherein the learned Single Judge of this court has quashed the complaint based on the said policy and that SLP filed against the order of the Single Judge of this court has been dismissed by the Supreme Court vide order dated 24.08.2009 in Crl.M.P. 13188/2009.

5. Learned Sh. Pawan Bahl, APP for the State submits that the notification relied upon by the petitioners cannot be read against Rule 32 of the Prevention of Food Adulteration Rules, 1955 framed under the Prevention of Food Adulteration Act, 1954. However, he does not dispute the fact that this case is fully covered in fact and law by the decision of the above referred judgment relied upon by the petitioners.

6. I have considered the rival contentions and gone through the material on record. In order to properly appreciate the contention of learned counsel for the petitioners, it would be appropriate to reproduce the relevant policy relied upon by the petitioners. It reads thus:

“2. It would be noted from the perusal of the above Rule that an elaborate procedure has been prescribed for labelling sealed contents indicating therein the cod number date of packing etc. however, it has been noticed that in quite a few cases contents of the sealed article of food was found conforming to the standard prescribed under the Rules, whereas the labelling done on the container or the

packet was deficient in certain respect and was not in conformity with the provision contained in Rule 32 of the PFA Rules, 1955. After detailed discussion on the subject, it was appreciated that in case the contents of the sealed packets or container conform to the standard laid down under the PFA Rules, deficiency with regard to Rule 32 which pertains to the particulars of the labelling on the container or packet, was only a technical offence, though it attracted Rule 32 and there was breach of this Rule in some respect in the course of packing the article of food. In such cases there was unanimous view during the course of discussion that the party effected may be given a written warning drawing his attention to Rule 32 which provides for labelling particulars to be exhibited on the sampled Tin or the packet and in case the practice is repeated after a written warning to the party concerned, the party committing the offence second time should be prosecuted. However, this could not apply in case where the contents of the sealed packed or container are not conforming to the prescribed standard and hence are adulterated. In such cases, prosecution would be launched both for adulteration and for breach of Rules 32. After the Secretary (Medical), as the consenting Authority, has approved the above proposal all the pending cases would be disposed of accordingly."

7. In the matter of **S.S. Gokul Krishnan & Ors. Vs. State through Food Inspector Govt. of NCT of Delhi**, wherein the above policy was subject matter of dispute, this Court observed thus:

"27. The alleged offence of violation of Rule 32 (f) and (i) was found to have been committed in the year 2005. At the relevant time department policy No.F6(228)/85/ENF/P.F.A. was in force and the said policy was cancelled, modified or withdrawn vide order No.5/07 dated 14.09.2007. As per the said policy, cases of breach of Rule 32, since pertained to the particulars of the labelling on the container or packet, were technical offences, the party affected was to be given a written warning drawing its attention to Rule 32, which required of date, month and year of manufacturing to be exhibited on the labels affixed on tin or the packet. It was only if the violation was repeated after a written warning, the party committing the offence second time had to be prosecuted. As per this policy, pending cases pertaining to breach of Rule 32 being of technical nature were decided to be disposed of accordingly.

28. It is not the case of the prosecution that petitioners were given warning by way of a notice drawing their attention to Rule 32 which provided for particulars to be exhibited on the sampled tin or the packet, and it was a case of second breach of Rule 32, i.e. in other words the offence was committed for the second time and therefore, the petitioners were liable to be prosecuted.

29. The policy being in force at the relevant time should have been adhered to by the department before it decided to file a complaint in the court for offences under Section 7/16 of the PFA Act. The petitioners are therefore within their rights to seek protection under the said policy which was in existence at the relevant time.”

8. In the instant matters also, it is not the case of the prosecution that the petitioners arrayed in the complaints were given warning by way of a notice, drawing their attention to Rule 32 of PFA Rules, 1955 framed under the Prevention of Food Adulteration Act, 1954, which requires for particulars to be exhibited on the packaged food products. It is also not the case of the prosecution that the complaints in question related to the violation of Rule 32 after the service of requisite warning notice on the respective petitioners. Thus, the ratio of the judgment of this court in the matter of S.S.Gokul Krishnan (supra) squarely applies to the facts and circumstances of this case and the respondent, before taking a decision to prosecute the petitioners, was required to serve the warning notice upon them as envisaged by Rule 32, which requirement of the policy has not been adhered to. Therefore, the prosecution of the petitioners on the allegation of misbranding of the food products is not justified, being violative of the notified policy.

9. In view of the above, the complaint cases bearing Nos. 59/PF/DA/08, CC No. 1854/2009, CC No. 1944/2009 & CC No. 1961/2009 titled as 'Food Inspector Vs. Ranbir Singh & Ors', 'Food Inspector Vs. Kalsang Tsering & Ors.', 'Delhi Administration Vs. Rama Harzai & Ors'. and 'Food Inspector Vs. Ravinder Kumar & Ors.' respectively and the proceedings emanating therefrom are quashed qua the petitioners.

10. The above petitions stand allowed.

11. Copy of the order be given dasti.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 01, 2010

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