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

Judgment reserved on: January 19, 2011
Judgment reserved on: January 20, 2011

\+ **CRL.M.C.NO.1047/2008 & CRL.M.A.NO.3882/2008(stay)**

M/S. BUNGE INDIA PRIVATE LIMITED & ANOTHER
....PETITIONERS

Through: Mr.Rajesh Batra, Advocate.

Versus

THE STATE & ANOTHER
.....RESPONDENTS

Through: Mr.Jaideep Malik, 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.

1. Through this petition under Section 482 Cr.P.C. M/s. Bunge India Pvt. Ltd. and its Manager Cum Nominee Raj Kumar Saraf are seeking quashing of complaint case bearing No.256/06 under Section 7/16 of Prevention of Food Adulteration Act, 1954(for short, hereinafter referred to "PFA Act") titled Food Inspector Vs. Manohar Lal & Others and the impugned summoning order dated 18.12.2006 passed by learned Metropolitan Magistrate.

2. Briefly stated, facts leading to filing of this petition are that on 18.12.2006, Shri M.K. Gupta, Food Inspector(PFA), Government of NCT of Delhi filed a complaint before Metropolitan Magistrate, New Delhi under Section 16 of PFA Act titled Food Inspector Vs. Manohar Lal & Others arraying petitioners as some of the respondents. It was, inter alia, alleged that on 15.09.2005 Food Inspector M.K. Gupta purchased a sample of "Dalda Vanaspati" from the premises of M/s. Ritu Raj Bhojnalya, Shop No.8218, Arakashan Road, Paharganj, New Delhi where said food article was stored for sale. The sample comprised of three sealed packets of "Dalda Vanaspati" having identical label declaration weighing 1 liter each. The sample was sent to public analyst, Delhi in untampered condition and remaining two counter parts were deposited with LHA. The public analyst vide his report bearing No.PFA/Enf./2103/2005 dated 05.10.2005 reported thus:

> "The sample is misbranded because Best Before declared in a misleading manner. However, Vanaspati conforms to standard".

3. On the basis of the report of public analyst, the Food Inspector filed a complaint before learned Metropolitan Magistrate, New Delhi on 18.12.2006 alleging violation of Section 2(ix)(g) and (k) and also the Provisions of Rule 32(f) and Rule 37 of PFA Rules.

4. M/s Bunge India Pvt. Ltd (petitioner No.1) is stated to be the manufacturer of "Dalda Vanaspati" and petitioner No.2 is alleged to be the Manager Cum Nominee of the company.

5. Learned counsel submits that respondents have failed to comply with their policy No. F6(228)/85/ENF/P.F.A. dated 20.09.1985 in prosecuting the petitioners without issuing a warning to them in terms of the policy. It is not in dispute that this very policy stood withdrawn subsequently in September, 2007. Learned counsel argued that on the date when the sample was taken, the policy was very much in force and thus it would be applicable to the petitioners.

6. 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.

7. Learned 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.

8. 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."

9. 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.
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> 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.
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> 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."

10. The present case is fully covered in facts and law by the decision of this court in **S.S.Gokul Krishnan** (supra), the SLP filed against which judgment being SLP Crl.M.P No. 13188/2009 has also been dismissed by the Supreme Court vide order dated 24th August, 2009. In view of the decision in the above referred case as also the policy notification No.F6(228)/85/ENF/P.F.A. dated 20.09.1985, the respondent was required

to issue a notice/warning to the petitioners, drawing their attention to violation of Rules regarding labelling particulars before any complaint could have been instituted against the petitioners. Admittedly, neither any notice nor any warning was issued to the petitioners. Thus, the filing of complaints against the petitioners under Section 7/16 of PFA Act without issuing warning against the misbranding as per the notified policy of the respondents is not justified.

11. In view of the above, the complaint case bearing No. CC 256/06 titled as Food Inspector Vs. Manohar Lal & Others and the proceedings emanating therefrom are quashed qua the petitioners.

12. The above petition stands allowed.

(AJIT BHARIHOKE)
JUDGE

JANUARY 20, 2011
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