

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 409 OF 2003

1. Asian Paints (India) Limited, a company registered under the Indian Companies Act 1913 and an existing company under the Companies Act, 1956 having its Registered office at 6A, Shantinagar, Santacruz (East), Mumbai 400 055, Formerly with Registered Office at 'Nirmal', 5th Floor, Nariman Point, P.B. No. 11701, Mumbai 400 021, and a branch inter alia at C/o Patil Bros, Peth Naka, Panchawati, Nashik 422 203. ...Petitioner

Versus

1. Inspector of Legal Metrology, Office of the Inspector of Legal Metrology, Dhule-2nd Section, House No. 7, Subhash Chowk, Near Mari Mata Temple, Dhule-2.
2. State of Maharashtra. ...Respondents

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Mr. Joydeep Chatterjee, Advocate for Petitioner.
Mr. A.R. Kale APP for Respondents.

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CORAM : V. K. JADHAV, J.

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Date of Reserving the Judgment : 23.09.2016
Date of pronouncing the Judgment : 24.10.2016

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JUDGMENT :-

1. By of this Writ Petition, the petitioner Company seeks quashing of the Criminal complaint bearing STCC No.322 of 1999 pending before the Judicial Magistrate First Class, Dhule.

2. Brief facts, giving rise to the present writ petition are as follows :-

The petitioner is a manufacturer of paints having its manufacturing facilities at various locations in India. Respondent No.1 is the Inspector of Legal Metrology who is responsible for administration of the Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as the said Acts) and the Standard of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as the Rules of 1977) in Dhule. Respondent No.1 on Inspection of the premises on 5.11.1998 of M/s Rangoli Paints, Nehru Chowk, Deopur, Dhule being one of the dealer of the petitioner herein and seized certain two packs of WOODORITE primer of one litre each on the ground that, packages contained an extra label containing price, month and year of packing.

Respondent Inspector issued a notice No.98/350 dated 16.11.1998 to the petitioner contending therein that, Maximum Retail Price and months and year of packing were marked on a sticker and the same constitutes an offence under section 33 of the Act and punishable under section 51 and 56 of the Act. The petitioner sought and attended personal hearing in response to the said notice. Respondent Inspector thereafter on 26.4.1999 issued a notice stating therein that a criminal complaint is filed before the Judicial Magistrate First Class, Dhule against the petitioner on 3.5.1999. The said complaint is registered as STC No.322/1999 and pending before the Court of Judicial Magistrate First Class, Dhule. Summons was also served on the petitioner on 29.7.1999. The petitioner therefore by filing present writ petition seeks quashing of said STC No.322/1999 pending before the Judicial Magistrate First Class, Dhule.

3. The learned counsel for the petitioner submits that the petitioner manufactures several varieties and shades of paints and such paints are sold in tins and drums of standard quality. The petitioner's product falls within the meaning of Packaged Commodities as defined in the Act and the Rules in

terms of Section 39 of the Act and Rule 6 of the Rules of 1977. The petitioner is required to make the declarations on the package to the effect that :-

- I)] Name and address of the manufacturer,*
- ii)] Identity of the commodity in the package;*
- iii)] Net quantity;*
- iv)] Month and year in which the commodity is manufactured or packed; and*
- v)] the retail sale price of the package.*

4. In terms of Rule 4 of the Rules of 1977, no person shall pre-pack, or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under these rules.

In terms of Rule 9 of the Rules of 1977 every declaration which is required to be made on a package shall be printed, painted or inscribed on the package or on a label securely affixed thereto.

5. The learned counsel submits that, the petitioner has standard pack sizes of packages for packing and marketing

the paints, the name and address of the manufacturer, the net quantity and identify of the product are pre printed on the package in a prominent manner. All these declarations are found together in the prescribed area of the Principal Display Panel. In regard to the month and year of packing as well as retail sale price, it would not be possible for the petitioner to preprint the same in advance. There are several varieties and shades of the paints, which will be virtually impossible to preprint the month and year of manufacturer/packing as the actual manufacture would depend on several factors which vary from time to time depending on market conditions. The petitioner cannot afford to preprint tins/drums on a uniform basis with month and year of manufacture/packing and discarding them in the event of not being able to use them later on. As regards to the retail sale price, the law requires to state the maximum retail price inclusive of all taxes since the petitioner has an all India market, it will have to take a note of various taxes and levies imposed in different states prior to determining the maximum retail price. Thus, the maximum retail price will have to be determined at the time of packing. It is for these reasons the manufacture, year of the manufacture and maximum retail price cannot be preprinted.

The learned counsel submits that, in terms of the then Rule 8(1), subject to Rule 8 (2) of the Rules of 1977, prior to 1999 amendment, every declaration required to be made under the Rules shall, wherever practicable, appear on the Principal Display panel and shall ordinarily be parallel to the base on which the package is intended by its manufacture to rest.

In terms of Rule 8 (2) (ii), prior to the 1999 amendment, in case of a container made of any metal, glass, plastic or foil, the month and the year in which the commodity contained in such container was manufactured or prepacked, may be indicated either on the top or on the bottom of such container. It is therefore, clear that it is not mandatory that all declarations should be shown on the label.

6. Learned counsel submits that, the petitioner, therefore, necessarily has to affix a label stating the month and year of the manufacture and retail sale price. However, no rule stipulates that all the declarations should be made on one label. Learned counsel submits that, the petitioner is complying with the provisions of Acts and Rules not merely in spirit but also in letter and therefore, no allegation of contravention can be levelled against the petitioner. Learned

counsel submits that without prejudice to the petitioner's contentions that the petitioner has not contravened any provision of the Acts and Rules, the petitioner's actions in stating declarations amounts to substantial compliance with the provisions of law and no consumer would be misled in any manner whatsoever by the petitioner stating the declarations partly on the package and partly on the label appearing together.

7. Learned counsel submits that notice dated 16.11.1998 issued by the respondent Inspector and prosecution of the petitioner initiated on the basis of the aforesaid notice is arbitrary, unreasonable and as such violates Article 14 of the Constitution of India. Said criminal complaint STC 322/1999 filed on the basis of said notice is not maintainable against the petitioner.

8. Learned counsel submits that similar, issue arose at Bangalore and the petitioner was constrained to file a writ petition No.30515/1997 before the High Court of Karnataka at Bangalore. The High Court of Karnataka, while staying operation of the notice issued by the Inspector of Legal Metrology directed the respondents not to take any action

against the petitioner on the ground that sale price is displayed on the container by affixing stickers. Further, in a like case, the petitioner was constrained to file Writ Petition O.P. No.2373/1999 and O.P. No.2382/1999 before the High Court of Kerala. The High Court of Kerala had stayed the operation of the notice issued by the Inspector of Legal Metrology and further directed the respondent therein that not to take any action against the Petitioner on the ground that sale price is displayed on the container by affixing stickers.

9. The learned counsel further submits that, in terms of Rule 4 of the Rules of 1977, no person shall pre pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declaration as are required to be made under these rules and in terms of Rule 6- the petitioner is required to make certain declarations on the package. Every package shall appear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of Chapter 2.

The learned counsel submits that, there are allegations

in the complaint that sealed packages contained an extra sticker containing price, month and year of the packaging. The learned counsel for the petitioner brought attention of this Court to the dictionary meanings of the words “**Label**”, “**Secure**”, “**Affix**” and “**sticker**” in the various dictionaries.

10. Learned counsel submits that, keeping in mind the dictionary meanings to the words especially 'label', 'securely' and 'affix', the impugned action of the respondent- inspector in issuing the notice dated 16.11.1998 and thereafter launching of the prosecution vide STC No.322/1999 is wholly improper, illegal and unreasonable.

11. The learned APP submits that, the petitioner has committed an offence as provided under section 33 of the Act read with Rule 4 of the Rules of 1977 and punishable under section 51 and 65 of the Standards of Weights of Measures (Enforcement Act, 1985). The petitioner has not challenged the letter and action of the Department nor bothered to submit any reply to the notice. Even, the petitioner or his representative have not attended a personal hearing before the respondent-inspector. The learned APP submits that, in terms

of the provisions of Rules as applicable at the time of seizure of the said goods, all the declarations required should be either on the surface area of the product or on the label securely affixed thereon. The learned APP submits that, the additional paper stickers containing month, year of packaging etc., found on the product and those are not securely affixed as provided under the relevant provisions of the Act. The learned APP submits that, a case is made out against the petitioner to proceed with the trial of STC No.322/1999. There is no merit in the writ petition and the writ petition is liable to be dismissed.

12. The petitioner company manufactures several varieties and shades of paints and such paints are sold in tins and drums of standard quality. The petitioner's product falls within the meaning of Packaged commodities as defined in the Act and the Rules. Chapter 2 of the Rules, 1977 makes the provision applicable to the packages intended for retail sale. Rule 4 of the Rules, 1977 which is relevant for the present discussion is reproduced herein below :-

4. Regulation for pre-packing and sale, etc., of commodities in packaged form-

On and from the commencement of these rules, no person shall pre-pack, or cause or permit to be pre-packed any

commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under these rules.

13. In terms of Rule 6 of the Rules, 1977, the petitioner on the package or on a label securely affixed thereto is required to make definite, plain and conspicuous declaration, made in accordance with the provisions of Chapter 2 as, to :-

- i] name and address of the manufacturer;
- ii] the common or generic name of the commodity contained in the package,
- iii] the net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where commodity is packed or sold by number, the number of the commodity contained in the package;
- iv] the month and year in which the commodity is manufactured or pre-packed,
- v] Retail sale price of the package
- vi] Where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece.
- Vii] such other matters as are prescribed in these rules.

14. So far as the present case is concerned, clause nos. (i) to (v) are relevant. In terms of Rule 9 of the Rules, 1977, every declaration which is required to be made on a package under these rules shall be :-

- a] legible, prominent, definite, plain and unambiguous,
- b] conspicuous as to size, number and colour,
- c] as far as practicable in such style or type of lettering has to be boldly, clear and conspicuously presented in distinct contrast to the other type, lettering or graphic material used on the package. (this clause is omitted w.e.f 6.7.1999).
- d] Numerals of the retail sale price and net quantity declaration and shall be printed, painted or inscribed on the package in a colour that contrasts conspicuously with the background of the label

Provided that,-

(a) where any label information is blown, formed or moulded on a glass or plastic surface, such information need not be required to be presented in a contrasting colour;]

(b) where any declaration on a package is printed either in the form of hand-writing or hand-script, such declaration shall be clear, unambiguous and legible.

15. Rule 4 and 6 of the Rules of 1977 are mandatory in this regard and declarations are required to be made on every package or on a label securely affixed thereto. So far as the name and address of the manufacturer, net quantity and identity of the product are concerned, the same are preprinted on the package in a prominent manner. So far as declaration with regard to the month and year of packing as well as retail

sale price is concerned, the package contained an extra paper sticker declaring the price, month and year of packing. Thus, the question arises whether declaration about the date and year of manufacturing of the product and retail price on a paper sticker would amount to compliance of Rule 4 and 6 of the Rules, 1977 as reproduced herein above.

16. So far as dictionary meanings of the words as pointed out by the learned counsel for the petitioner, the same is reproduced herein below in a tabular form.

WORDS	OXFORD ADVANCED LEARNER'S DICTIONARY	WEBSTER'S NEW WORLD DICTIONARY	OXFORD PAPERBACK DICTIONARY
LABEL	1. piece of paper, cloth, metal, etc., on or beside an object and describing its nature, name, owner, destination, etc: put a label on a piece of clothing, a specimen, one's luggage.	1. a card, paper, etc. marked and attached to an object to indicate its contents, owner, destination, etc.	1. a slip of paper, cloth, or metal etc. fixed on or beside an object and showing its nature, owner, name, destination, or other information about it. 2. a descriptive word or phrase classifying people etc- label v (Labelled, labelling) 1. to attach a label to.
SECURE	firmly fixed; not likely to fall, be broken, etc; reliable:	--	--
AFFIX	1. stick, fasten or attach		
STICKER	1. sticky label with a picture or message on it.	A person or thing that sticks, specif, a gummed label.	1. An adhesive label or sign 2. a person who persists in his or her efforts

17. Prima facie there appears to be some difference between the word "label" and "sticker". If a paper sticker used for such

declaration as aforesaid, it cannot be prima facie said that such declaration is made on a label securely affixed on a package. A paper sticker affixed with the help of gum or adhesive cannot be said to be firmly affixed. It is likely to fall/broken. It is not reliable. Prima facie I find substance in the allegations made in the complaint and case is made out for trial in accordance with law. The legislature at their wisdom considered the same and, thus Rule 4 and 6 of the Rules, 1977 provides such declarations are to be made on every package or on a label securely affixed thereto. In the present case, prima facie, it appears that, there is no compliance of the Rule 4 and 6 of the Rules 1977.

18. In view of the above discussion, I do not find any substance in the writ petition. Hence, following order.

O R D E R

- I. Writ Petition is hereby dismissed.
- II. Rule discharged.

(V. K. JADHAV)
JUDGE

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