

\$~

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

Judgment delivered on: 02nd February, 2016

+ CRL.M.C. 560/2011

MOUNT EVEREST MINERAL WATER LTD Petitioner

Represented by: Mr. Abhishek Malhotra and

Mr. Himanshu Singh Dhillon, Advs.

Versus

STATE & ANR Respondents

Represented by: Mr. Izhar Ahmad, APP for
the State with Mr. Hukum Singh, Food
Inspector.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner seeks directions thereby setting aside of orders dated 17.09.2001 and 03.07.2009 passed in Complaint Case No.115/2001 titled as “*Food Inspector (PFA) v. Sandeep Gupta*” and consequently, the aforesaid complaint case also be quashed.

2. The brief facts of the case are that on 08.06.1999, the Food Inspector purchased a sample of a ‘Natural Mineral Water’ a food article for analysis from one Sandeep Gupta of M/s Speciality Restaurant Pvt. Ltd., E-3, Inner Circle, Connaught Place, New Delhi, where the said food article was found stored for sale and the said Sandeep Gupta was found engaged in the business of said food article at the time of sampling. The sample taken by the Food Inspector consisted of 9x1 Litre sealed plastic bottles of ‘Natural Mineral Water’

of same lot in original sealed condition bearing identical label declaration under the supervision and direction of SDM/Local Health Authority. Each bottle containing sample was separately packed and sealed according to the Prevention of Food Adulteration Acts & Rules, (hereinafter referred to as the Act).

3. One counter-part of sample was also sent to Public Analyst, Delhi in intact condition and two counter-parts were deposited with Local Health Authority in intact condition. Public Analyst analyzed the sample and found the sample to be misbranded under Section 2 (ix) (e) of the Act punishable under Section 16(1)(a) read with Section 7 of the Act. Accordingly false claims were found to be made on label.

4. The present petition has been argued mainly on the ground that the Public Analyst has acted beyond its authority while opining about the contents of label / packaging of the sample of the water.

5. As per Section 13(1) of the Act, the Public Analyst could only report to the Local Health Authority of the result of the analysis of any article of food submitted by him for analysis. As water was excluded from the definition of 'food', therefore by no stretch of imagination the Public Analyst could have decided to analyze the sample of water or report about the contents of the label affixed thereon.

6. Ld. Counsel appearing on behalf of the petitioner submitted that while taking cognizance and while framing notice, Id. Trial Court has failed to appreciate that appropriate rules for labelling mineral water

were introduced in the Prevention of Food Adulteration (6th Amendment) Rules, 2000 (hereinafter referred to as the Rules, 2000) which came into force on 29.03.2001 whereas the alleged date of recovery is 08.06.1999. Thus, the provisions of the Act were not applicable to water which is substantiated on the record from perusal of Notification dated 21.03.2001 issued by Ministry of Health and Family Welfare published in the Gazette of India, whereby the Central Government has declared the 'packaged drinking water' as food for the purpose of the Act for the first time in 2001, whereas, the alleged incident took place in the year 1999.

7. Ld. Counsel further submitted that the Id. Trial Court failed to appreciate that at the relevant point of time, i.e., 1999, there were no standards prescribed by any law for 'mineral water' hence there can be no question of any offence having been committed by the petitioner under Section 2 (ix)(e) of the Act or any other law whatsoever.

8. Further submitted that as per Section 2 (ix) of the Act 'misbranding' would be applicable only to an article of food which has false claims made for it upon the label or where the package containing the article of food bears any statement, design or device regarding the ingredients or the substance contained therein which is false or misleading in any material particular. Moreover, under Section 2 (ix)(e) of the Act, it is nowhere mentioned what is the false claim.

9. Learned counsel further submitted that the allegations against the petitioner is of 'misbranding' not of adulteration. Section 13 of the

Act also does not mention ‘misbranding’ and only talks about adulteration. Even as per definition under Section 2 (v) of the Act, “food” means any article used as food or drink for human consumption other than drugs and water. Thus, it is not applicable in the case of the petitioner.

10. To strengthen his arguments, Id. Counsel appearing on behalf of the petitioner has relied upon a cases of ***Hindustan Lever Ltd. v. Food Inspector and Anr. (2004) 13 SCC 83*** wherein the Supreme Court held as under:

“7. Clause (b) of sub-rule (2) of Rule 37-A clearly indicates that proprietary food means food which has not been standardised. The learned counsel for the respondents, however, submits that in view of sub-rule (1) the appellant was supposed to have approval of such articles of food from the Government of India. We, however, find no merit in the submission of the learned counsel for the respondents, since it applies only to infant dairy milk products or the infant dairy milk food, the sample which has been taken and has been analysed is neither infant milk substitute/infant food nor it is skimmed milk powder, an article for which standards have been prescribed under the Prevention of Food Adulteration Rules. Any prosecution in regard to an article for which no standards have been laid, applying the standards for other articles would not be sustainable.”

11. Further relied upon ***Sh. Mayur Jaykumar Vora v. Government of NCT of Delhi decided on 21.04.2011 in Crl. M.C. 3288/2009*** wherein this Court held as under:

“12. Taking into account that fruits squash/fruit syrup as also the fruit crush are derived from the ripe fruit, the standard applicable to all these products ought to be similar. Admittedly, at the relevant time, when the sample was taken, there was no standard prescribed for fruit crush. Therefore, under the circumstances it has to be treated at par with fruit products detailed in Rule 29(c) of PFA Rules and the standards applicable fruit squash/syrup/cordially ought to have been applied in the instant case. Otherwise also, it falls within the category of non-alcoholic fruit drink and is covered under Rule 29 of PFA Rules. Indisputably, as per Rule 29 (c) and (d) of PFA Rules, use of tartrazine, sunset yellow in manufacture of fruit squash, fruit syrup etc. and non-alcoholic fruit drink etc. is permissible. Therefore, by no stretch of imagination, it can be said that the petitioner or his company has violated the provisions of PFA Act or the PFA Rules framed thereunder”

12. Also relied upon a case of **S.S. Gokulkrishnan and Ors. v. State**

2009 CrL. L.J. 1386, wherein this Court held as under:

“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 labeling 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.”

13. On the other hand, Id. APP appearing on behalf of the State submitted that as per Public Analyst Report for false claims of “Balance of Natural Minerals safe for Human Consumption particularly for babies and pregnant woman having certification from the Institute of DE Feresenium, Germany and IS/ISO 9002 Company” which is punishable under Section 16(1)(a) read with Section 7 of the Act. As per the Public Analyst Report, the sample was found misbranded for the above reason. The petitioner did not avail its statutory right and defence under Section 13(2) of the Act and did not send the second counter part of sample as per law to a higher expert, i.e., Central Food Laboratory, Director for re-analysis. Thus the petitioner accepted the report as correct.

14. Ld. APP further submitted that in Form-VI, it is clearly

mentioned that only the “Main Identical Label Declaration” is reproduced and not all the declaration of the label, which has been conspicuously concealed in the whole petition to get the undue advantage of quashing. In addition to this, the available remedy of Revision in Sessions Court has been deliberately withheld and suppressed in the whole petition. For this reason, in the criminal amendment of 2006 even State Appeals against acquittal were mandated for sessions Court.

15. I have heard learned counsels for the parties.

16. It is important to note that there is a statutory provision as to how and what is to be disclosed in a particular manner as defined in the Statute. That is why, Section 19 of the Act has specifically defined that the purchaser having purchased any article was not prejudiced by the sale is no defence. Moreover, the petitioner has not taken the alternative efficacious remedy by filing Revision in the Court of Sessions. However, approached this Court under Section 482 Cr.P.C.

17. Moreover, the Public Analyst acted within her Authority and the sample of the product of the petitioner was very well covered within the definition “Food”. Section 2 (v) of the Act reads as under:

“(v) “Food” means any article used as food or drink for human consumption other than drugs and water and includes-

(a) any article which ordinarily enters in to, or is used in the composition or preparation of, human food,

(b) any flavouring matter or condiments, and

(c) any other article which the Central Government may having regard to its use, nature, substance or quality, declare, by notification in the official Gazette, as food for the purposes of this Act.”

18. On perusal of the aforesaid provisions, it is revealed that Mineral Water is an article which is ordinarily for human consumption. Further, mineral water had been notified in official Gazette by Central Government vide Notification No. GSR 807 (E) dated 14.11.1994 and it was covered under the definition of “Food” as prescribed under 2(v)(c) of the Act w.e.f 14.11.1994. Accordingly, the Public Analyst rightly analysed and reported the sample of Mineral Water as “food”. Thus, the petitioner has violated Section 2 (ix)(e)(g) of the Act for making false declaration. Therefore, it is not covered under warning policy.

19. The case of the prosecution is not based on PFA (6th Amendment) Rules, 2000, but the notification which is of the year 1994. The Notification of 2000 was only regarding certain amendments in 1994 notification, according to which the Mineral Water was already defined as “Food” and needed compliance of Section 2 (ix)(e)(g) like all other food articles even in 1994 and hence the compliance of all labelling provisions of food was also mandatory on sample dated 08.06.1999. The sample article was “Mineral Water” and not “Packaged Drinking Water” which is other than Mineral Water as per its definition, hence the standard/labelling condition of packaged drinking water have no relevance to the sample of mineral water. The

mineral water was covered under “Food” as per Notification dated 14.11.1994, so compliance of Section 2 (ix) (e) was compulsory on the date of sample, i.e., 08.06.1999.

20. It is pertinent to mention here that only plain water is excluded from definition of “food” defined under Section 2 (v) of the Act whereas mineral water was defined and standardized as “food” under Article A-32 of Appendix B of PFA Rules, 1955 w.e.f 14.11.1994. Moreover, the petitioner has not challenged the report of public analyst, although, he had a right to do so under Section 13 (2) of the Act, which shows that the petitioner has accepted the report of Public Analyst.

21. In my considered view, the misbranding that the water in question is safer for human consumption particularly for babies and pregnant women, is itself a violation of Section 2 (ix)(e) of the Act, which is an offence under Section 7(ii) and is punishable under Section 16 read with Section 7 of the Act.

22. In view of above discussion, I find no merit in the instant petition.

23. Accordingly, the petition is dismissed.

Crl. M.A. 2166/2011 (for Stay)

Dismissed as infructuous.

SURESH KAIT, J

FEBURARY 02, 2016/jg