HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL No.617 of 2017
And
WRIT PETITION No. 9527 of 2017
&
Writ Appeal No. 555 of 2017

Common Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.M.P. No. 11798 of 2017 in W.P. No. 9527 of 2017 dated 20.3.2017, whereby the learned Single Judge directed the appellants not to take any coercive action pursuant to the impugned notice; and the third appellant herein was directed to complete the stamping process of the weigh bridge, in respect of the notice dated 18.2.2017 issued by him, pending disposal of the Writ Petition.

A notice was issued on 18.2.2017 recording certain deficiencies in the weigh bridge located outside the premises of the Steel Authority of India's warehouse at Nagulapally, Patancheru Mandal, Sangareddy District. The notice records that, on inspection of the weigh bridge, the loaded lorry was checked in both the forward and in the backward direction, and a reading was recorded with respect to the same lorry; and, at the time of inspection, the manual bridge was also available which manipulated the weighment reading. The Chairman and Managing Director of Steel Authority of India Ltd and its Directors, besides the Warehouse Manager at Nagulapally, Patancheru Mandal, Sangareddy District, were informed that, if they wished to get the offences compounded departmentally instead of being tried in a Court of law, they may do so by paying the necessary compounding fees within a period of ten days.

It is not in dispute that the maximum compounding fee, prescribed under the Legal Metrology Act, 2009 (hereinafter referred to as “the Legal Metrology Act”) is Rs.25,000/- per person. It is also not in dispute that, with respect to all the eight individuals to whom notices were issued by the appellants, compounding fee of Rs.25,000/- per person, i.e,. for a total sum of Rs.2.00 lakhs, has already been paid.

Sri J. Prabhakar, learned counsel for the respondents-writ petitioners, would submit that, while the respondents-writ petitioners are ready to forego the compounding fee already paid by them under protest and not claim refund thereof, they are aggrieved by the notice issued to the Chairman and Managing Director and other Directors of the Steel Authority of India Ltd, all of whom discharge their functions from New Delhi; they can, by no stretch of imagination, be said to be in-charge of the warehouse at Nagulapally Village in Patancheru Mandal; the impugned notice does not even state that the Chairman and Managing Director, and the Directors of the Steel Authority of India Ltd, are in-charge of the affairs of the warehouse at Nagulapally Village, Patancheru Mandal; in his reply to the show cause notice Sri R.R. Sorte, the Ware House Manager, had stated that it is he who is in-charge of the affairs of the warehouse of Steel Authority of India Ltd, at Nagulapally; it is he alone who can be proceeded against, and not the Chairman and Managing Director and other Directors of the Company; in reply to the impugned notice, a letter was addressed by the respondents herein (petitioners in the Writ Petition) on 1.3.2017 requesting the third appellant to drop all further proceedings against the Chairman & Managing Director, and the Directors of Steel Authority of India Ltd; and in **Pepsico India Holdings Private Limited v. Food Inspector**[1] the Supreme Court had followed its earlier judgment in **S.M.S. Pharmaceuticals Ltd v. Neeta Bhalla**[2], to hold that the Chairman and Directors of a Company cannot be held to be in-charge of the affairs of a unit of the company.

As Sri J. Prabhakar, learned counsel for the respondents, would rely on the judgment of the Supreme Court in **Pepsico India Holdings Private Limited**[1] to contend that the Chairman and Managing Director and other Directors of the Company sitting at Delhi, cannot be held responsible for a deficient weigh bridge in Nagulapally Village, Patancheru Mandal of Sangareddy District, it is necessary to read Section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Food Adulteration Act") the scope of which fell for consideration in **Pepsico India Holdings Private Ltd**[1]**,** in juxta-position with Section 49(1) of the Legal Metrology Act.

Section 17 of Prevention of Food Adulteration Act, 1954	Section 49(1) of the Legal Metrology Act, 2009
Offences by companies.-(1) Where an offence under this Act has been committed by a company— (a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business	Offences by companies and power of Court to publish name, place of business etc., for companies convicted.____ (1) Where an offence under this Act has been committed by a company,___ (a) (i) the person, if any, who has been

[1] [2011] 1 Supreme Court Cases 176
[2] [2005] 8 SCC 89

of the company (hereinafter in this section referred to as the person responsible), or (ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and (b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. (2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated. Explanation.- Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.	nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this Section referred to as a person responsible); or (ii) where no person has been nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and (b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

Section 17(1)(a)(ii) of the Food Adulteration Act is more or less identical to Section 49(1)(a)(ii) of the Legal Metrology Act. While the submission of Sri J. Prabhakar, learned counsel for the respondents-writ petitioners, that the Chairman and Managing Director and other Directors functioning from New Delhi cannot be held to be in-charge, and to be responsible for the conduct of business of the company at Nagulapally Village, Patancheru Mandal, Sangareddy District has considerable force, it is wholly unnecessary for us to examine this contention in as much as the respondents-writ petitioners have already submitted a reply to the notice issued by the third appellant.

As Sri J. Prabhakar, learned counsel for the respondents-writ petitioners, fairly states that the compounding fee of Rs.2.00 lakhs, already paid on behalf of the respondent-writ petitioner, may be retained by the appellants herein; and they only seek the third appellant to examine whether the Chairman and Managing Director and other Directors of the Steel Authority of India Ltd, sitting in New Delhi, can be held to fall within the ambit of Section 49(i)(a)(ii) of the Legal Metrology Act, we consider it appropriate to direct the third appellant to re-examine the respondents-writ petitioners' claim that the Chairman and Managing Director, and the other Directors of the Company, cannot be proceeded against for a deficient weigh bridge in Nagulapally Village, Patancheru Mandal, Sangareddy District, and it is only the Warehouse Manager who can be proceeded against in the light of the law declared by the Supreme Court in **Pepsico India Holdings Private Ltd**[1] and **S.M.S. Pharmaceuticals Ltd**[2]. Till a decision is taken by the third appellant, on the respondents-writ petitioner's reply to the notice, no coercive action shall be taken against them.

In so far as the deficient weigh bridge is concerned, Sri J. Prabhakar, learned counsel for the respondents-writ petitioners, would submit that the manual weigh bridge has been removed, and the deficiency, in the electronic weigh bridge, has also been rectified, albeit after receipt of the notice from the third appellant. In such circumstances, we consider it appropriate to direct the third appellant to have an inspection caused of the weigh bridge; and if he is satisfied that the deficiencies in the weigh bridge were rectified, and the manual weigh bridge has been removed, to then stamp the weigh bridge, and permit the respondents-writ petitioners to operate the weigh bridge thereafter. The exercise of inspection of the weight bridge, and a decision being taken on whether or not the respondents-writ petitioners should be permitted to operate the weigh bridge thereafter, shall be completed within a period of ten days from today.

Both the learned Government Pleader for Civil Supplies, and Sri J. Prabhakar, learned counsel for the respondents-writ petitioners, would submit that the Writ Petition can itself be disposed of in the light of the aforesaid order. They would also state that the cause in W.A. No. 555 of 2017, which was also preferred against an interlocutory order in the very same Writ Petition, would not survive necessitating any further adjudication by this Court.

W.A. No.617 of 2017 and W.P. No. 9527 of 2017 are disposed of as directed hereinabove, and W.A. No. 555 of 2017 is dismissed as infructuous. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

20th December, 2017.

Note:
Furnish c.c. in two days.
b/o
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