

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.18242 of 2018

ORDER :

Heard Sri A. Sudarshan Reddy, learned Senior Counsel appearing for Sri Srinivas Iyengar, the counsel for petitioner; and the learned Government Pleader for Civil Supplies, for respondents.

2. The petitioner-Company is a contract packer of M/s.Hindustan Coca-Cola Beverages Private Limited. It *inter alia* manufactures packaged drinking water in the State of Telangana under the authority granted by M/s. Coca-Cola Company, U.S.A. and its bottler M/s.Hindustan Coca-Cola Beverages Private Limited to prepare and package beverages in authorized containers under the trademark of the Coca Cola Company in relation to products of bottle / packaged drinking water under the brand name 'Kinley®'. Its manufacturing plant is located in Plot Nos.5 and 7, Pashamylaram, Patancheru Mandal, Medak District.

3. The 1st respondent is the State of Telangana represented by it's Principal Secretary, Food and Civil Supplies Department; the 2nd respondent is the Controller of Legal Metrology, Hyderabad; and the 3rd respondent is the District Inspector, Department of Legal Metrology, Sanga Reddy.

4. On 24.04.2018 at about 04:30 p.m., officials of the Legal Metrology Department of the State of Telangana attached to the

Office of the 3rd respondent visited the petitioner's plant at the above address and informed the employees of petitioner that they had come to carry out an inspection of the plant with regard to statutory compliance regarding products manufactured by it and inspected bottles of the product of packaged drinking water 'Kinley' of capacity 1 litre and 2 litres.

5. The petitioner filed WP.No.15467 of 2018 challenging the seizure, but it was disposed of on 27.04.2018 directing the petitioner to avail alternative remedy of appeal available under Section 50 of the Legal Metrology Act, 2009.

6. Petitioner filed an appeal before the 2nd respondent who is the appellate authority under the said Act, but the said appeal was also rejected through the impugned order dt.26.05.2018.

7. Assailing the same, this Writ Petition is filed.

CONTENTIONS OF PETITIONER

8. The petitioner states that the 3rd respondent's officials informed the petitioner's representatives that the petitioner did not comply with Rule 6(2) of the Legal Metrology (Packaged Commodities) Rules, 2011 (**for short, 'the Rules'**), and in particular, that the petitioner had not specifically declared the name and address of the contact person / office to be contacted for any consumer complaint.

9. The petitioner contends that officials of the respondent seized 21,889 packages of 2 ltr. water bottles and 75,926 packages of 1 ltr.

bottles under a *panchnama* dt.24.04.2018 under the above pretext in an arbitrary manner.

10. Petitioner contends that the said products are prepared, manufactured and packed by it with utmost care and precaution in conformity with law including the Food Safety and Standards Act,2006, the Legal Metrology Act and the Rules framed thereunder in 2011 ; that its products conform to production quality and integrity as public confidence in quality and authenticity of the product bearing the trademark of the Company is critical to petitioner's business; that the products of petitioner meet high-quality specifications laid down by M/s.Coca-Cola Company and the production process ensures that production is done under fully mechanized, controlled, hygienic conditions which include labeling and packaging; it being not only manufacturer of the product, but also packer of the product, the information provided by it on the package is in a dual capacity and meets the statutory requirement under Rule 6(2) of the Rules; that the respondents have wrongly interpreted the above Rule to mean a 'person by name to be contacted' whereas the Rule clearly provides an 'option' to give the name, address and contact details of *an Office also*.

11. Petitioner contends that the practice in the trade and industry is that it is left open to the Companies to decide whom the consumer should contact, i.e., manufacturer or a complaint cell; that dedicated persons are available to handle consumer complaints; that the label of products seized by 3rd respondent gives it's address i.e.,

manufacturer's address as well as that of M/s Hindustan Coca Cola Beverages Pvt. Ltd at New Delhi apart from consumer help-line number with the *e-mail* I.D. to be contacted in case of consumer complaints; and a consumer having a grievance or complaint with regard to the product manufactured by the petitioner has details of the manufacturing unit or Plant nearest to the Consumer as well as Consumer help-line number available to him to lodge a complaint /make a grievance.

12. Petitioner contends that that the action of the respondent has resulted in a loss of Rs.2.73 crores which is estimated more than the cost of the seized products, that the products have only a residual shelf-life of (12) months and without proper application of mind, the seizure of the said products has taken place.

13. According to petitioner, when the seizure of products took place on 24.04.2018,; that the order passed by the appellate authority is also unsustainable; that the 2nd respondent passed orders without application of mind and he ought to have seen that as per *panchnama* packages seized contain the complete details of the manufacturer and there was no violation of rule 6(2) ; and in fact, there was substantial compliance of Rule 6(1)(a) and 6(2) of the above Rules and the name of petitioner, as manufacturer, is clearly mentioned on the label therein apart from the *e-mail* address and the consumer help-line number which are sufficient to enable the consumer to lodge any complaint in case of any grievance.

14. Sri A. Sudharshan Reddy, learned Senior Counsel appearing for Sri Srinivas Iyengar, counsel for petitioner, relied upon the decisions in **Nirma Limited v. State of Punjab**¹ and **R.K. Mittal v. B. Roy Chowdhuri and others**², in respect of the above contentions.

CONTENTIONS OF THE RESPONDENTS

15. Counter-affidavit has been filed by the 3rd respondent on behalf of respondent nos.1 to 3 stating that there was an inspection done on 24.04.2018 by the Officials of the 3rd respondent and they noticed Kinley Water Bottles of capacity 1 and 2 litres stored for sale containing only the name of the manufacturer, M.R.P., date of packaging, consumer help-line number and e-mail address, but there was no declaration on the packages of the name, address, telephone number, e-mail address of the 'person' who can be contacted or the 'office' which can be contacted in the case of a consumer complaint as required under Rule (6) (2) of the Rules; and therefore, they seized the packages on the ground that there is violation of the Act and the Rules made therein.

16. It is contended that storing for sale of such water bottles in non-standard packages by the petitioner is an offence and a case was registered against the petitioner for contravention of Section 18/ 36 of the Legal Metrology Act, 2009 and Rules 4 and 6(2) and the Rules framed thereunder.

¹ 2015 Law Suit (S.C.) 546=2015 (2) RCR (Cri) 469; 2015 AllM.R. (Cri) 3682; 2015 (4) CurCriR 7, 2015; and (3) LawHerald (SC) 1879

² 1984 Law Suit (CAL) 359

17. It is also contended that the toll-free number and e-mail address given on the packages is not pertaining to the petitioner-Company and that mentioning the same is not sufficient compliance with Rule 6(2) of the Rules. It is contended that *if the manufacturing address and the address of toll free number is same, then petitioner has to indicate the same on its packages, but it failed to do so*. It is stated that the toll-free helpline number mentioned on the packages manufactured by the petitioner is a general number of the control unit of the Coca-Cola Company and consumers may face hardship to reach the petitioner for any help and to hold any particular person or office responsible for redressal of their grievance.

18. It is stated that the petitioner only complied with Rule 6(1) of the Rules by giving it's details as a manufacturer, but did not comply with Rule 6(2) of the Rules.

19. It is asserted that the requirement of mentioning the name of the person in-charge or office address under Rule 6(2) is independent of the requirement of mentioning of manufacturing address as required under Rule 6(1), and this requirement is mandatory and non-furnishing of these details would delay the redressal of consumer grievances.

20. The learned Government Pleader for Civil Supplies, appearing for respondents, placed reliance on the judgments of the Supreme Court in **M.C. Mehta v. Union of India and others³**, State of

³ 2017 (7) SCC 243

**Maharashtra and others v. Raj Marketing and another⁴,
Raghunath Rai Bareja and another v. Punjab National Bank and
others⁵ and Securities and Exchange Board of India v. Kanaiyalal
Baldevbhai Patel⁶.**

21. In view of the rival contentions of the parties, the point which arises for consideration is :

“Whether the order passed by 2nd respondent on 26.05.2018 dismissing petitioner’s appeal No.751/T/2018, confirming the action of seizure of products by 3rd respondent under panchnama dt.24.04.2018 warrants any interference by this Court in exercise of its power under Article 226 of the Constitution of India?”.

22. From the facts narrated above, it is clear that on the seized products of 1 ltr. and 2 ltr. Kinley packages it is clearly mentioned that the petitioner is the manufacturer on behalf of M/s Hindustan Coca Cola Beverages Pvt. Ltd, B-91, Mayapuri Industrial Area, Phase-I, New Delhi -110064. Also, the consumer helpline number and e-mail I.D. has also been mentioned, apart from the M.R.P. and the date of package.

23. Rule 6(1) of the said Rules states:

“Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to 6(1) (a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for

⁴ 2011 (15) SCC 525

⁵ 2007 (2) SCC 230

⁶ 2017 (15) SCC Pg.1

any imported package the name and address of the importer shall be mentioned on every package.”

24. Thus it requires mentioning of the name of the manufacturer of a product on the package. Admittedly, in the instant case this Sub-Rule of Rule 6 is complied with.

25. Rule 6(2) of the said Rules added vide G.S.R.No.385(E), dt.14.05.2015, states:

“Every package shall bear the name, address, telephone number, e-mail address of the person who can be or the office which can be contacted in case of complaints”.

26. The seizure of products from petitioner was done by officials of 3rd respondent on the ground that the packages found did not bear the details of the person in-charge or office address for consumer complaints, and therefore, there was non-compliance of Rule 6(2) of the Rules. The appeal filed by the petitioner was also rejected by the 2nd respondent on the same ground.

27. The appellate authority stated that the main purpose of Rule 6(2) is to make known the address and other details of the manufacturing company to the consumer for redressal of his grievances, and mere mentioning of the manufacturer’s address and details might be compliance of Rule 6(1) but not Rule 6(2).

28. In **Nirma Limited** (1 supra), the product in question was salt and the allegation was that the product was not labeled in accordance with Rule 32 of the Prevention of Food Adulteration Rules, 1955 since the complete address of the manufacturer with name of the State

was not mentioned . Interpreting the said Rule, the Supreme Court observed that the extract of the address on the packages which were sought to be confiscated reveals that the name of the village and district where the product was being manufactured was clearly mentioned and insofar as Registered Office of the manufacturer is concerned, the road on which the same is located, as well as the city in which it is located were mentioned apart from the pin codes and this would certainly satisfy the requirement of providing complete address contained in the Rule. It observed that *the requirement of complete address would be satisfied if the implementing authority or a consumer or for that matter any other interested person, is in a possession to locate the place of the manufacturer as well as the registered office of the manufacturer, on the basis of the address displayed on the label of the packaging.* It held that the address would be deemed to be complete, provided there was no ambiguity in locating the place of the manufacturer or the registered office of the manufacturer and it would be complete if the address depicted is not referable to more than one location. It observed that finding fault, for not mentioning the name of the State would be permissible if the address indicated is referable to more than one State. It therefore, concluded that the product in question was not misbranded under the Prevention of Food Adulteration Act, 1954, and the proceedings initiated against the appellant were quashed.

29. Similar view was taken in **(R.K. Mittal)** (2 supra), wherein it was alleged by the State that the in the paper label of the containers of

carbonated water only the name of the manufacturer was given but it did not contain the business address of the manufacturer as required by Rule 32 of the Rules made under the Prevention of Food Adulteration Act. The Court noted that on the paper label even though the name of the manufacturer without any address has been given, on the crown cork, the address of a well-known agency was mentioned and communications addressed to that agency were duly received by the said agency through post. It held that there was no difficulty either the authority or the consumers in locating the said concern. The complaint against the manufacturer was thus quashed.

30. Admittedly, in the present case, the petitioner had mentioned its own address as the manufacturer and had given the e-mail address and the toll-free number to be contacted in case of consumer complaints.

31. Rule 6(2) gives the option either to mention the name of a *person* who can be or *office* which can be contacted, in case of consumer complaints. So merely because no individual is named on the package to receive the consumer complaints, there cannot be said to be any violation of the said Rule.

32. Further in the instant case, when the petitioner had mentioned its address, it cannot be said that the said address cannot be treated as an address of an 'office' which can be contacted in case of a consumer complaint. In my opinion, it is not necessary for the petitioner to indicate/mention on the packages that it's address already mentioned is also the address to which consumer complaints can be made. No

consumer of the product manufactured by the petitioner or any of the respondents can have any doubt as to where the product was manufactured and that the petitioner can also be contacted in case of consumer complaints. May be it would have been better if the petitioner had also mentioned on the package that its address is also the address where consumer complaints can be lodged. But the absence of such an endorsement on the package cannot be said to disable a consumer in any way to sue the petitioner in the event of a grievance or a complaint.

33. In my considered opinion, the interpretation placed by the 2nd respondent on Rule 6(2) to mean that it is always necessary that a separate address of an office or person for making consumer complaints is required to be mentioned is not correct. In my considered opinion, Rule 6(2) as well as Rule 6(1) stood complied and no action can be taken against the petitioner for the alleged violation of the same.

34. The decision in **M.C. Mehta** (3 supra) relied upon by the Government Pleader considered the provisions of the Environment Protection Law and it is laid down therein that a purposive interpretation should be made of the Rules made with the objective of enhancing or protecting further deterioration of the quality of the area from the continuing and continuous onslaught of pollutants.

35. In **Raj Marketing and another** (4 supra), the word “wholesale package” as defined in the Standards of Weights and Measures

(Packaged Commodities) Rules, 1977 was considered and it was held that a secondary outer packing for safety of goods would not be covered under the expression “wholesale package”. The said decision turned on the interpretation of the said word and offers no assistance in the present case.

36. In **Raghunath Rai Bareja and another** (5 supra), the provisions of Section 31 of Recovery of Dues to Banks and Financial Institutions Act, 1993 were interpreted. It was held that resort to legislative intent for purpose of interpreting a provision of law can be had when the language employed by the legislature is doubtful or ambiguous or leads to some absurdity. The said principle is unexceptionable.

37. In **Kanaiyalal Baldevbhai Patel** (6 supra), the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 was considered by the Supreme Court and it was stated that while interpreting a statute efforts should be made to give effect to each and every word used by the Legislator.

38. But this Court is giving a purposive interpretation to Rule 6 and holding that there is no difficulty for any consumer of the products manufactured by the petitioner or for the respondents to proceed against the petitioner in the event the product manufactured by it is found to be defective by way of a consumer complaint on the basis of the information endorsed on the packages.

39. In my considered opinion, the decision in **Nirma Limited** (1 supra) would clearly apply and where there is no ambiguity in locating the petitioner or its employer, i.e., M/s. Hindustan Coca-Cola Beverages Private Limited to proceed against them in case of a consumer grievance on the basis of the information printed on the packages, to allow the respondents to proceed against the petitioner simply because the petitioner did not mention on the packages that its address is also the address where consumer complaints can be registered, would plainly amount to harassment of the petitioner. A State, like the 1st respondent which professes to ease the business environment ought not to employ such means which would be counter-productive to the said objective and improving the business climate.

40. There is an additional finding in the appellate order passed by the 2nd respondent about the violation of Rule 8, i.e., that the petitioner ought not to have mentioned that the cap / neck should be seen for date of manufacturer and M.R.P. on the ground that this would apply only to bottles which are returnable by the consumer for being refilled. However this was not the ground on which the products of the petitioner were seized. A reason not mentioned in the *panchnama* could not have been made a ground to reject the petitioner's appeal when petitioner was not made aware of it.

41. Accordingly, the Writ Petition is allowed. The order dt.30.04.2018 of the 2nd respondent in Appeal No.751/T/2018 is set aside, and the respondents are directed to release the seized stock to

the petitioners forthwith. Any criminal case registered against the petitioner on the basis of the *panchnama* dt.24-4-2018 shall also stand quashed. No order as to costs.

42. As a sequel, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11 -07-2018

Ndr/*

