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

+ **W.P.(C) 6354/2016 & CM APPLN. NO.26038/2016**

PARAG MILK FOODS LTD Petitioner
Through Mr. Bharat Malhotra, Adv.

versus

UNION OF INDIA AND ANR Respondents
Through Mr. Harish Kumar Garg and Ms.
Payal Agarwal, Advs. for R1.
Mr. Prateek Gupta and Ms. Ritika
Sharma, Advs. for FSSAI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **19.02.2019**

1. The present petition has been filed, *inter alia*, impugning communications dated 29.04.2015 and 21.10.2015 issued by the office of the Assistant Controller, Food (JMC) and the Assistant Director (Enf) of the Food Safety and Standards Authority of India (FSSAI). The petitioner is, essentially, aggrieved by the said decisions inasmuch as the concerned Authorities have held that the petitioner has misbranded its product –Ultra Heat Treatment (UHT) milk which is marketed under the brand name, ‘GO’. The petitioner submits that samples of its aforesaid product were taken by the FSSAI Authorities from Jammu area and the same were declared as misbranded. It is stated that subsequently, samples of the double toned milk sold by the petitioner were also taken from the

petitioner's warehouse.

2. The said decisions have been challenged by the petitioner by way of a writ petition before the High Court of Jammu and Kashmir (OWP No. 323/2015), which was stated to be pending at the time when the present petition was filed.

3. The petitioner is, essentially, aggrieved by the allegation that it has been misbranding its goods. It is claimed by the petitioner that different stands are being taken by different FSSAI Authorities, in different States. In view of the circumstances, the petitioner approached the FSSAI for clarification and resolution of the matter.

2. The controversy between the parties relates to the use of the word 'GO' as well as the caricature of a cow on the packaging. In this regard, the Joint Director (Regulatory Compliance), FSSAI, sent a letter dated 14.07.2017, indicating that the petitioner was using two art works for labelling which included one that used the caricature of a cow. The art work, without use of the caricature of the cow, was accepted by the FSSAI. However, the FSSAI refused to approve the art work of the labelling, which included the caricature of a cow. The said letter is set out below:

“Subject: Request for approval / NOC of Art work of 'GO' brand UHT pack – reg.

Sir,

Please refer to your letter No.Nil dated 27.06.2017 on the above mentioned subject. The matter relating to permission for use of artwork, labelling and use of existing pack has been examined and the following clarifications are made:

(i) FBO has sent two Artworks for their new packaging of double toned milk for No Objection from FSSAI. One Artwork contains a caricature of Cow and other Artwork is without any cow caricature.

It is clarified that FSSAI has no objection to the use of artwork without caricature of cow as submitted by FBO at annexure 1 of the letter under reference. A copy of the said label is attached. However, the second artwork with the caricature of cow is not approved as the same is in contravention of sub- regulation 2.2.1(3) of FSS (Packaging and Labelling) Regulations, 2011.

(ii) The Artwork proposed also contains ingredients as 'Cows Milk and Milk Solids made from Cows Milk'. The justification given by FBO is that they use only cow milk and milk solids derived from cows milk for production of the Double Toned Milk. The question is as to whether 'Cows Milk and Milk Solids made from Cows Milk' can be written instead of 'Milk Solids' in the labelling of Double Toned Milk package.

It is clarified that FBO may use the text "Cows Milk and Milk Solids made from Cows Milk" instead of 'Milk Solids' provided that cow milk and milk solids are derived only from cow milk for production of double toned milk. Further, the text 'Cows Milk and Milk Solids made from Cows Milk' may be taken into consideration in the context of label declaration under "Ingredients" list only.

(iii) The FBO has existing packaging of double toned milk with the labelling Milk Solids under ingredient with caricature of cows. It has been requested to allow use of this packaging for two months w.e.f. 1st July, 2017.

The proposal is not agreed to as use of caricature of cows is in contravention of FSS (Packaging and Labelling) Regulations, 2011.

Yours faithfully

(Parveen Jargar)
Joint Director (Regulatory
Compliance)”

4. In view of the aforesaid letter, the only question that remained to be considered was whether the use of the caricature of a cow, is in contravention of Sub-regulation (3) of Regulation 2.1.1 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (hereafter ‘the Regulations’), as alleged by the FSSAI. This was also noted by this Court in the order dated 27.11.2017.

5. It is the petitioner’s case that the petitioner has used only cow milk for manufacturing the product – UHT milk. It is also the petitioner’s case that the said product is manufactured by heating cow milk and, therefore, there could be no objection to placing a caricature of cow on the packaging, which is also the petitioner’s trademark. The petitioner has also filed an affidavit to the aforesaid effect.

4. Sub-regulation (3) of Regulation 2.2.1 of the Regulations, is set out below:

“Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.”

4. It is apparent from the reading of the aforesaid regulation that any label which is misleading, false or deceptive, is proscribed. In this regard, the respondent was repeatedly called upon to submit as to how caricature of a cow and label would be misleading if the product itself consists of cow milk, albeit, reduced by ultra-heat treatment.

5. The respondents have been unable to make any submissions to support the view that the caricature of a cow on the label is misleading in the aforesaid context. It is also noted that notice in the present petition was issued on 25.07.2016 and the respondent was permitted to file a counter affidavit within four weeks from the said date. The respondents have failed to do so. On 19.09.2016, the respondents were given further four weeks of time to file the counter affidavit. However, respondents failed to avail of this opportunity as well. Finally, on 13.11.2017, their right to file counter affidavit was closed in view of the failure to file one, despite several opportunities. Thus, the averments made by the petitioner remain uncontroverted.

6. The learned counsel appearing for the FSSAI has been pointedly asked as to why the caricature of a cow on the label should be considered as offending Regulation 2.2.1 (3) of the Regulations. However, this court has been unable to elicit any satisfactory response. In view of the above, this Court finds no reason to accept the respondents stand that the use of caricature of a cow on the label of petitioner's product manufactured

from cow's milk, falls foul of Sub-Clause (3) of Clause 2.2.1 of the Regulations.

7. The allegation of the FSSAI that the caricature of a cow on the label would amount to misbranding is unmerited.

8. The petition is disposed of with the aforesaid observations. It is, however, clarified that the aforesaid order is being passed on the premise that the product sold by the petitioner is manufactured solely from cow's milk. Thus, the respondent will not be precluded in any manner from proceeding against the petitioner, if the said assertion is found to be incorrect.

9. The pending application is also disposed of.

FEBRUARY 19, 2019
DR

VIBHU BAKHRU, J