



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-10-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.21291 of 2016

And

WMP No.25246 of 2018

G.Devarajan

..Petitioner

vs.

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai - 9.
- 2.The Principal Secretary,
Food, Civil Supplies, Consumer Protection and
Price Control,
Government of Tamil Nadu,
Secretariat,
Chennai - 9.
- 3.The Police Commissioner,
Police Commissioner Office,
Vepery,
Chennai - 7.
- 4.The Commissioner,
Food, Civil Supplies, Consumer Protection and
Price Control,
Protection Department,
"Ezhilagam" IV Floor,
Chepauk,
Chennai - 5.
- 5.The Joint Commissioner,
Department of Legal Metrology,
Labour Welfare Building,
6th Floor, D.M.S. Complex,
Teynampet,
Chennai - 6.
- 6.The Manager,
Hindustan Coca Cola Beverages Pvt Ltd.,
East India Chamber,
No.7, Valluvar Kottam High Road,
Nungambakkam,
Chennai - 34.



7. The Manager (Corporate Office),
S2 Cinemas,
25 Whites Road,
Mamatha Complex,
5th Floor, Royapettah,
Chennai - 600 014.

8. The Manager,
S2 Cinemas,
2nd Floor, Spectrum Mail,
Paper Mills Road,
Perambur,
Chennai - 600 011.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 5 to stop Hindustan Coca Cola Company along with S2 Cinema Theatre Corporate Company (respondents 6 to 8) from fixing high price to their products than actual fixed market price and selling the same in Cinema Theatres in Chennai and Tamil Nadu (including S2 Cinema Corporate Company) at an excessive additional price by swindling people's money and the same should be forfeited by the Government and to be sent to the Treasury and registering cases against the sixth, seventh and eighth respondents in accordance with Criminal Procedure Code.

For Petitioner : Mr.G.Devarajan
(Party-in-Person)

For Respondents-1 to 5:Mr.C.Kathiravan,
Government Advocate.

For Respondents-7 and 8:Mr.Satish Parasaran,
Senior Counsel assisted by
Mr.Cyril Amarchand Mangaldas.

For Respondent-6 : No Appearance

O R D E R

The relief sought for in the present writ petition is to direct the respondents 1 to 5 to stop Hindustan Coca Cola Company along with S2 Cinema Theatre Corporate Company (respondents 6 to 8) from fixing high price to their products than actual fixed market price and selling the same in Cinema Theatres in Chennai and Tamil Nadu (including S2 Cinema Corporate Company) at an excessive additional price by swindling people's money and the same should be forfeited by the



Government and to be sent to the Treasury and registering cases against the sixth, seventh and eighth respondents in accordance with Criminal Procedure Code.

2. The petitioner states that on 14.04.2016 at about 06.30 p.m., he went to see 'Theri' film along with his family in S2 Cinema Theatre at Perambur. Several Cinema Theatres in Chennai (including S2 Cinema Corporate Company) and in Tamil Nadu have not let the audience to bring snacks, potable drinks and even drinking water inside their premises. Therefore, the audiences are forced to buy snacks, beverages and drinking water from the Food Stalls located inside the premises of Theatres in Chennai (S2 Cinema Corporate Company) and Tamil Nadu.

3. During intermission time, the petitioner went to Food Stall situated within S2 Cinema Theatre, as the Theatre Management (Respondents 7 and 8) not allowed the petitioner to bring his own home made snacks and drinking water. Therefore, the petitioner purchased 'Kinley' 500 ml water bottle manufactured by Hindustan Coca Cola Company for Rs.30/- and 'Maaza Mango' 400 ml cool drink bottle for Rs.65/-, as he felt that the prices are much higher than the open market. Therefore, he asked about the price to the S2 Cinema Theatre Management and they refused to reply the petitioner.

4. The petitioner called the Hindustan Coca Cola Company Customer Care Number and ascertained the market price of 'Kinley' 500 ml water bottle and the 'Maaza Mango' 400 ml cool drink. However, they replied that they do not have the price list of the same. After making telephone calls to various Online Companies and visited several Companies in Chennai to cross check the actual price, the petitioner understood that the S2 Cinema Theatre and the Hindustan Coca Cola Company are jointly swindling huge sums of money from the general public by charging exorbitant money over actual price fixed by the Government, while selling the products.

Product	As on 14.04.2016	
	Market Price	S2 Cinema Theatre Price
'Kinley' 500 ml Water Bottle	Rs.10/-	Rs.30/-
'Maaza Mango' 400 ml Bottle	Rs.25/-	Rs.65/-
As on 28.05.2016		
'Kinley' 500 ml Water Bottle	Rs.10/-	Rs.40/-

5. The petitioner states that he understood that the market price for the said products were much lower than the price charged by the respondent-Cinema Theatre. It is contended that the act of selling the same product in two different prices at two different places that too by printing prices over the bottle



WEB COPY

made it clear that the said Hindustan Coca Cola Company along with S2 Cinema Theatre Corporate Company had swindled huge sums of money from the general public by marketing and selling the consumer products. The petitioner states that the Company is also involved in huge sums of fraud and therefore, actions are to be initiated.

6. The petitioner states that Hindustan Coca Cola Company along with S2 Cinema Theatre Corporate Company had been involved in these issues and they have jointly committed fraud and thus, stringent action is to be taken. In support of his contention, the petitioner has enclosed the receipts, copy of the representations sent by him to the Competent Authorities for initiation of action.

7. The learned Senior Counsel, appearing on behalf of respondents 7 and 8 - S2 Cinema Theatres, objected the contentions raised by the petitioner-in-person and has clarified that prior to the year 2017, dual MRP fixation was permitted considering the nature of place of selling and therefore, there was no irregularity or illegality. Even in case where such irregularity or illegality was noticed by the petitioner, it would be appropriate for him to approach the Consumer Forum claiming compensation. Contrarily, the petitioner cannot file the writ petition for initiation of action, as he has failed to substantiate the allegations in this regard.

8. The learned Senior Counsel, appearing on behalf of respondents 7 and 8 - S2 Cinema Theatres, reiterated that it was noticed that the Legal Metrology (Packaged Commodities) (Amendment) Rules, 2017, was proposed to be made effective from January 1, 2018, the answering respondent ensured that they complied with the same. Thus, following the Legal Metrology (Packaged Commodities) (Amendment) Rules 2017, the respondents 7 and 8 confirms that no packaged commodities are sold at dual MRPs after January 1, 2018.

9. The respondents 7 and 8 have stated that the water bottles that are sold at the Perambur Theatre, includes the own brand of their product and the same are sold at the MRP. 'Kinley' water bottles are no longer sold at the Perambur Theatre and currently 'Schweppes water' and 'Smart water' brands are sold at the MRP. Therefore, no sale at dual MRPs is undertaken. Further, 'Maaza' pet bottle, as available in the market, is no longer sold at the Perambur Theatre. Though the same is not the subject matter of the writ petition, it is submitted that all other packaged commodities such as Chocolates, Munches etc., are sold at the MRP/same price as available in the market.



10. The learned Senior Counsel for respondents 7 and 8, contended that the provision had the effect of prohibiting dual pricing and was termed effective from January 1, 2018. The introduction of the amended provision, substantiates the position that there was no restriction prior to January 1, 2018 on dual MRPs for the same product, which is now sought to be revised.

11. It is contended that respondents 7 and 8 have not violated the provisions of the Act and as of now, MRP rate alone is charged for the products sold in their Cinema Theatres. The learned Senior counsel is of an opinion that if at all the petitioner is aggrieved in respect of the deficiency of service of the erstwhile management, it is for him to approach the appropriate forum seeking damages of compensation. However, general allegations made regarding non providing of drinking water in Cinema Theatres and selling of packed food at MRP are incorrect.

12. The learned Government Advocate, appearing on behalf of respondents 1 to 5, has stated that the Government of India vide GSR 629(E) dated 23rd June 2017 made rules further to amend the Legal Metrology (Packaged Commodities) Rules, 2011. As per newly inserted Rule 18 (2A) of the Legal Metrology (Packaged Commodities) (Amendment) Rules 2017, "unless otherwise specifically provided under any other law, no manufacturing or packer or importer shall declare different maximum retail prices on an identical pre-packed commodity by adopting restrictive trade practices or unfair trade practices as defined under Clause (c) of sub-section (1) of Section 2 of the Consumer Protection Act, 1986".

13. It is further contended by the learned Government Advocate, appearing on behalf of respondents 1 to 5, that Section 4-A of the Central Excise Act, 1944 (as amended from time to time), MRP based assessment, different retail prices for different regions on same package, duty liability to be charged on highest of MRPs and Revenue Appeals are allowed. However, these aspects are to be substantiated by the petitioner.

14. The Controller of Legal Metrology further states that under the Legal Metrology (Packaged Commodities) Rules, 2011, every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011.

15. Narrating the statutory provisions and explaining the implications, the Controller of Metrology in counter has stated that the High Court may pass appropriate orders.



16. Considering the arguments, the MRP pricing after 1st January, 2018 is not disputed between the parties. Even the petitioner has admitted that the writ petition is filed in the year 2016 in respect of the irregularities and illegalities committed and he has not raised any allegations regarding the Post Amendment Rules. Thus, the case of the petitioner is to be considered with reference to the allegations raised, more specifically, at the time when he visited the Cinema Theatre during the year 2016. It is contended by the petitioner that large scale irregularities and illegalities were committed during the relevant point of time and in spite of several representations, the Authorities have not initiated any action. Thus, the petitioner is constrained to move the present writ petition.

17. The petitioner states that he is preserving all evidences and documents and he is ready to submit all such evidences and documents before the Competent Authorities to establish his case in the manner known to law.

18. The learned Senior Counsel appearing on behalf of respondents 7 and 8, reiterated that the present Management, who took over the Theatre in the year 2018, is scrupulously following the MRP pricing strictly in accordance with the provisions of the Amended Rules and in respect of the allegations against the erstwhile Management, it is left open to the petitioner to establish or prove the same before the appropriate Forum.

19. The learned Government Advocate, appearing on behalf of respondents 1 to 5, reiterated that there were several such allegations during the relevant point of time in the public domain. Thus, the Authorities if found any such illegalities, then actions are to be initiated in the manner known to law. It is reiterated that the Government Authorities are periodically conducting inspections and initiating actions if any violations are identified.

20. This Court is of the considered opinion that security consideration may prevail upon the Cinema owners to prohibit carrying of drinking water from the market inside the Cinema Hall. Sometimes undesirable elements may carry alcoholic drinks or even water mixed with acid inside the Cinema Halls. There have been reports on bottle bomb devices exploding at Theatres leading to evacuation of the Theatres. A Cinema Hall, which seeks to prohibit carrying of drinking water inside the Cinema Hall for security reasons, must necessarily provide free potable and pure drinking water through water coolers installed inside the Cinema Halls, before such a prohibition can be enforced. An



appropriate water purifiers such as Aqua-guards or similar installations, need to be installed with the water coolers, so that the water available for the cinema goers free from the impurities. Disposable glasses in sufficient quantity need to be kept available near the water coolers. It has also to be ensured that the water supply is actually available through the water coolers before the movie starts as well as throughout the screening of the movie including interval. If for any reason, water supply is not available on a particular day, alternative arrangements for supply of free pure and potable drinking water for the cinema goers needs to be made available by the owners of the Cinema Hall. The Cinema Hall is also required to ensure that the water coolers as well as water purifiers remain fully functional and are regularly serviced from time to time, so that only purified water is dispensed through the water coolers. If this is not done, the owner of the Cinema Hall would be liable to pay appropriate compensation for the deficiency in rendering services to the cinema-goers. Mere availability of the drinking water would not be sufficient to enforce prohibition of carrying drinking water inside the Cinema Halls. Purified drinking water with prescribed standards must be provided, so as to satisfy the requirements.

21. Though the respondents 7 and 8 contend that such drinking water facilities are made, there are several allegations that such facilities are mostly not provided in many Cinema Theatres. Even the learned Government Advocate, appearing on behalf of respondents 1 to 5, states that in such circumstances, if the Authorities found deficiency suitable actions are initiated. However, it is to be ensured that drinking water facilities are provided all the times to the cinema goers in the Hall.

22. The petitioner-in-person emphatically states that during the relevant point of time, no such water facilities were provided in any Theatres. Even in cases where such drinking water facilities are provided, such water is in unhygienic condition and merely providing water is insufficient in view of the fact that it is not purified. The petitioner has further stated that the cinema goers were forced to purchase water bottles on exorbitant price and also other packed foods, including chocolates etc. Therefore, the Authorities during the relevant point of time allowed the Hindustan Coca Cola and the respondents 7 and 8 to extract exorbitant money from the cinema goers forcibly and committed fraud and therefore, appropriate actions are to be initiated against all those offenders and to punish them under the provisions of the Statute.

23. Undoubtedly, there are many such complaints in the public domain during the relevant point of time and even now.



However, the actions taken by the Authorities are undoubtedly insufficient and not made available before this Court. However, the learned Government Advocate, appearing on behalf of respondents 1 to 5, states that during the period from February 2020-2021 to July 2020-2021 to the tune of Rs.12,66,500/- was collected towards compounding fee. Therefore, the Authorities are frequently conducting inspections. But such statistics are not available with reference to the period relating to the allegations raised by the petitioner.

24. Mere efflux of time, cannot be a ground to deny justice to the parties. No doubt, five years have lapsed, but the petitioner is still pursuing the issue by stating that he is ready to establish his case and preserving the evidences. For such purchase of drinking water bottles, snacks etc., on the higher price, illegalities, if any, committed cannot be condoned merely on the ground of delay.

25. Undoubtedly, an enquiry is to be conducted in such circumstances and the truth must be culled out. On enquiry, if any prima facie materials are traced out and the allegations raised are prima facie truthful, then the Authorities Competent are bound to initiate appropriate actions by following the procedures as contemplated under the law.

26. As stated above, at no circumstances, illegality or offences committed can never be condoned merely on the ground of delay. But this Court cannot conduct a Roving Enquiry in respect of the allegations raised by the petitioner. The material evidences required an adjudication by the Competent Authorities. When the petitioner is still interested in proving his case before the Authorities, this Court naturally has to give an opportunity to the petitioner to establish his case.

27. The right of the citizen to establish his case is a constitutional right, which cannot be denied by the Courts. Equally, the rights of respondents 7 and 8 are also to be respected. Therefore, the respondents 7 and 8 are also at liberty to defend their case in the manner known to law. In all fairness, the due process of law cannot be denied to a citizen, who has raised certain serious allegations against the Cinema Theatres and more specifically, there were several such complaints in the public domain during the relevant point of time and even now. The learned Government Advocate for respondents 1 to 5 says in recent days, inspections are frequently conducted and cases are also being registered.

28. The department officials are duty bound to conduct periodical and surprise inspections in all the Cinema theatres across the State of Tamil Nadu. This being the statutory duties



conferred on the authorities, lapses, negligence or dereliction of duty on the part of the competent authorities must be viewed seriously. When there are many such complaints in the public domain and certain nature of illegalities and irregularities in Cinema Theatres are frequently an issue amongst the Cinema Goers, the authorities in such circumstances on information, must conduct surprise inspections, so as to find out the truth regarding the complaints and for initiation of appropriate action.

29. In view of the facts and circumstances, this Court is inclined to pass the following orders:

(1) The petitioner is directed to submit the copy of the complaints / representations before the 5th respondent / Joint Commissioner, Department of Legal Metrology, within a period of two weeks from the date of receipt of a copy of this order along with the documents, evidences, if any, etc., In the event of receiving the copy of the complaints / representations, the 5th respondent is directed to conduct an appropriate enquiry by affording opportunity to all the parties concerned including the respondents 7 and 8 and adjudicate the issues on merits and in accordance with law and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

(2) The respondents 1 to 5 are directed to conduct inspection through the jurisdictional Subordinate officials across the State of Tamil Nadu within a period of two months from the date of receipt of a copy of this order and ensure that purified drinking water facilities are adequately provided in commensuration with the seating capacity of the respective Cinema Theatres and further, ensure that clean and hygiene Restroom / Toilets are provided adequately. It is to be verified that the other statutory requirements are also complied with.

(3) The 5th respondent is directed to ensure that the complaints submitted by the public is enquired into immediately and appropriate actions are taken.

30. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

