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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 26th August, 2021

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W.P.(C) 9051/2021 & CM APPL. 28169/2021

RUPA SINGH

..... Petitioner

Through Mr. Gurinder Pal Singh, Mr. Nitin Mangla, Mr. Sidharth Borah, Mr. Jaya Bajpai,
Advocates

versus

MINISTRY OF HEALTH AND
FAMILY WELFARE & ORS.

..... Respondents

Through Mr. Rakesh Chaudhary, Advocate for
R-2

Mr. Gautam Narayan, Additional Standing
Counsel, GNCTD with Mr. Adithya Nair,
Advocate for R-3

Mr. Gopal Jain, Senior Advocate, Mr. Rajsekhar
Rao, Senior Advocate with Ms. Gowree Gokhale,
Mr. Alipak Banerjee, Mr. Darren Punnen for R-9

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 28168/2021 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 9051/2021 & CM APPL. 28169/2021 (Stay)

1. Present Public Interest Litigation has been preferred seeking the following reliefs:-

“1. Issue a Writ, Order or Direction in the nature of Mandamus to all Respondents to take appropriate steps to inform the general public of the nature of the risk to health which the products in question [‘ORSL’, ‘ORSL Plus’, ‘ORSL Rehydrate’ and ‘Fruitnik Electro+ ORS’] present or may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk. Such a Writ, Order or Direction shall ensure strict compliance of Section 18(f) of FSSAI Act.

2. Issue a Writ, Order, or Direction in the nature of Mandamus to Respondents 1 to 5 to publicize and make school authorities aware that ‘ORSL’, ‘ORSL Plus’, ‘ORSL Rehydrate’ and ‘Fruitnik Electro+ ORS’ are not to be administered to children as an ‘ORS’ option.

3. Issue a Writ, Order, or Direction in the nature of Mandamus to Respondents 2 and 3 directing them to ensure that in terms of [Regulation 5 (1) of the Food Safety and Standards (Safe food and balanced diets for children in school) Regulations, 2020] the products in question [being products with added sugar] are not advertised, marketed or sold including free sale in school campus or to school children in an area within 50 meters from the school gate from any direction.

4. Issue a Writ, Order, or Direction in the nature of Mandamus or any other Writ prohibiting, in the interest of public health, the manufacturing, storage, marketing, distribution and/or sale of ‘ORSL’, ‘ORSL Plus’, ‘ORSL Rehydrate’ and ‘Fruitnik Electro+ ORS’ in the manner shown and description projected as at present and in their present labelling format. Such a Writ, Order or Direction shall ensure strict compliance of Section 30 and 34 of the FSSAI Act.

5. *Issue a Writ, Order, or Direction in the nature of Mandamus or in any other form of Order deemed necessary to Respondent No.2 and the private Respondent Nos. 6 to 10:*

(i) *To ensure and make such change or changes or modifications in the packaging labels of ‘ORSL’, ‘ORSL Plus’, ‘ORSL Rehydrate’ and ‘Fruitnik Electro+ ORS’ as may remove any doubt or misgiving about the products in the interest of public health and safety.*

(ii) *To put Disclaimers in BOLD on the front and back side of the packing that (a) “ THIS IS NOT AN ‘ORS’ (b) THIS IS NOT A ‘W.H.O RECOMMENDED FORMULA’. (c) ITS USE IN DIARRHOEA WOULD BE INJURIOUS TO HEALTH”.*

6. *Issue a Writ, Order, or Direction in the nature of Mandamus to Respondents 2 and 3 directing them to launch prosecution against private Respondents 6 to 10 for intentionally and deliberately cheating the public at large by fraudulently making them believe their products to be ‘ORS’ and thereby causing health and monetary loss to the public and making unlawful gains to themselves.*

7. *Issue a Writ, Order, or Direction in the nature of Mandamus to Respondents 2 and 5 directing them to ensure strict enforcement and implementation of Advertising and Labelling Regulations in relation to online pharmacies to enable average customers to check and verify all product related information including (a) Details of Manufacturer (b) Ingredients (c) Nutritional Information (d) Usage Details (e) Date of Manufacture (f) Date of Expiry (g) Disclaimers (h) Harmful or adverse side effect in consuming a product.*

8. *Such other Writ(s), Order(s) or Directions as this Court may deem fit and proper in the interest of public health and safety.”*

2. At the outset, learned counsel appearing on behalf of the Petitioner submits that suffice would it be for the disposal of this writ petition if a

suitable direction is given to the concerned Respondent Authority to treat this petition as a representation and decide the same, in accordance with law.

3. In view of the above limited submission, we hereby direct Respondent No.2 or such other Competent Authority to treat this petition as a representation and look into the grievances ventilated in the present petition in accordance with law, Rules, Regulations and Government policies, applicable to the facts of the case, after giving an adequate opportunity of personal hearing to the private Respondents herein and / or any other stakeholder including the Petitioner, more particularly, the party against whom there would be a likelihood of an adverse order. This exercise shall be completed as early as possible and practicable.

4. With these observations, writ petition along with accompanying application is disposed of.

CHIEF JUSTICE

JYOTI SINGH, J

AUGUST 26, 2021
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