

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

W.P.No.3285 of 2008

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Sri Ram Reddy, learned counsel for the petitioners and Mr. G.Praveen Kumar, learned Deputy Solicitor General of India for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioners have prayed for the following reliefs:

i) issue a Writ order or direction more particularly in the nature of writ of certiorari and declare that the provisions of Standards of Weights and Measures Act 1976 and Standards of Weights and measures (Packaged Commodities) Rules, 1977 (as amended *vide* Notification No.GSR 425E dated 17th July, 2006 and effective from 14th January, 2007 are not applicable to the subject goods and quash the impugned notices dated 16th January, 2008 bearing Nos.286/PC/2007-087 and 287/PC/2007-08 passed by respondent No 3 and to pass such other order/s as this Hon'ble Court may deem fit and proper;

- ii) declare the definition of “pre-packed commodity” in rule 2(1) of P.C.Rules as *ultra vires* the provisions of SWM Act inasmuch as it includes packages which can be opened before sale;
- iii) strike down the definitions of “institutional consumer” and “industrial consumer” in Rule 2A of Standards of Weights and Measures (Packaged commodities) Rules as being contrary to the scheme of the Standards of Weights and Measures act and the Packaged Commodities Rules;
- iv) stay the operation and effect of the impugned notices issued by respondent No.3 till the disposal of this petition; and
- v) pass such other order or orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

3. From the above, it is seen that basic challenge of the petitioners is to a series of notices issued by the Inspector of Legal Meteorology, CC.II, Secunderabad (respondent No.3) dated 16.01.2008 informing the petitioners that they had contravened Section 39 of the Standards of Weights and Measures Act, 1976 (briefly ‘the Act’ hereinafter) read with Rules 23(1)

and 39(1) & (2) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (briefly 'the Rules' hereinafter) punishable under Section 63 of the Act.

4. The aforesaid notices indicate that respondent No.3-Inspector had inspected the trading premises of the petitioners including the packages manufactured by M/s. Controls & Switchgear Contractors, New Delhi displayed for sale. However, on inspection it was found that the year and month of manufacture were not indicated; *secondly*, retail sale price was also not disclosed; therefore, the packages were seized under Section 29 of the Act whereafter, the impugned notices came to be issued. Petitioners were informed that a case was registered against them as well as the manufacturer. However, it was mentioned that the offence is compoundable under the Act on payment of necessary compounding fees. Instead of complying with the aforesaid notices, the present writ petition came to be filed by the petitioners.

5. We find that on 27.02.2008, the writ petition was admitted for hearing and by an interim order, respondents were restrained from prosecuting the petitioners on the ground of violation of the Act and the Rules.

6. Fourteen long years have gone by since the date of filing of this writ petition. However, no counter-affidavit has been filed by the respondents. At this distant point of time and having regard to the nature of the controversy, we are of the view that it is not necessary to examine the *vires* of different provisions of the Act and the Rules. Since the matter is at the stage of notice only, it is open to the petitioners to approach the respondents-authorities and avail the opportunity for compounding the offence, if so advised.

7. Let the petitioners approach the respondents within a period of thirty days from today whereafter, respondents shall proceed in accordance with law. If there is default, respondents are at liberty to take appropriate decision.

8. Interim order passed by this Court on 27.02.2008 stands vacated.

9. Writ Petition is accordingly disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, stand dismissed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 28.11.2022
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