

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 11672 of 2009

M/S. BOTTLED WATER PROCESSORS
ASSOCIATION

..... Petitioner

Through: Ms. Rama Ahluwalia, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. N. Waziri Standing Counsel for
GNCTD with Mr. Shoaib Haider, Advocate.

Mr. Ramesh Kumar, Advocate for BIS.

Mr. Atul Nanda with

Ms. Sugandha, Advocate for UOI.

CORAM: JUSTICE S.MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
20.05.2010

1. The Bottled Water Processors Association having its office at New Delhi has filed this writ petition seeking directions against the Union of India ('UOI') through the Secretary, Ministry of Health & Family Welfare (Respondents 1 and 3), the Director General, Prevention of Food Adulteration ('PFA') (Respondent No.4) the Director General, Bureau of Indian Standards ('DG, BIS') (Respondent No.5) and the Lieutenant Governor of Delhi representing the Government of National Capital Territory of Delhi ('GNCTD') (Respondent No.2) and the Commissioner of Police, Delhi (Respondent No.6) to take action under the provisions of the Bureau of Indian Standards Act, 1986 ('BIS Act') and the Prevention of Food Adulteration Act,

1954 ('PFA Act') as well as the Food Safety and Standards Act, 2006 ('FSSA') against all "local units manufacturing and selling packaged drinking water without licence and BIS Certification Mark".

2. It is the Petitioner's case that although Section 14 of the BIS Act makes it mandatory for certain food articles including 'packaged drinking water' to conform to the Indian Standard and mandatorily use the Standard Mark under Section 14 of the BIS Act read with Rule 49 (28) of the Prevention of Food Adulteration Rules 1955 (PFA Rules), there are a large number of units in Delhi selling packaged drinking water without complying with the above norms. Apart from violation of Section 14 of the BIS Act, it is alleged that there is violation of the PFA Rules read with the PFA Act as well. It is stated that in June 2009, the attention of the UOI was drawn to the above fact and the names of seven such illegal manufacturers along with their addresses was furnished. Yet no action was taken to stop such illegal activities. Annexure P-3 to the petition lists out some of the labels under which packaged drinking water is sold, their place of manufacture and the status as regards compliance with the BIS Act.

3. On 7th January 2010, this Court passed the following order:

"Learned counsel for Respondent No.4 Director General, Prevention of Food Adulteration informs the Court that of the 27 units alleged by the Petitioner to be operating without valid license, an inspection has been carried out of 20 units and the address of the remaining 7 units is found to be incorrect. Respondent No.4 is directed to file an affidavit within two weeks giving the details of the units of which inspection has been carried out and also indicating

the corrective action, if any, taken by Respondent No.4 if any of those units were found operating without a valid licence. Learned counsel for Respondent No.5, the Director General, Bureau of Indian Standards states that his affidavit is ready and will be filed during the course of the day with advance copy to learned counsel for other parties.

List on 8th March 2010.”

4. On 7th January 2010, the DG, BIS (Respondent No.5) filed a counter affidavit enclosing the results of ‘discreet investigation’ carried out by it of the units as mentioned by the Petitioner. The stand was that while the authorities under the PFA Act might be able to prosecute offenders, “the BIS would not be in a position to initiate investigations and prosecute such offenders”.

5. Thereafter on 8th March 2010 the following order was passed:

“1. Learned counsel for Respondent No.4 states that the report of the SDM will be filed during the course of the day. Advance copy has been given to learned counsel for the Petitioner.

2. It is made clear that if the SDM finds that some of the units are operating in violation of the law, he will take immediate corrective action in accordance with law without awaiting further orders of this Court.

3. List on 14th April 2010. Order be given dasti to learned counsel for the parties.”

6. Pursuant to the above orders, a counter affidavit dated 26th March 2010 has been filed by the Local Health Authority, the Department of Food

Adulteration, GNCTD. It was stated that many of the units “could not be found” or “were out of jurisdiction” or “not found functioning”. Where one or two units were found without “genuine certificate”, action was initiated.

7. The rejoinder filed by the Petitioner on 4th May 2010 sets out a tabulated chart which shows the discrepancies in the inspection reports of the BIS and the PFA Department. While the BIS found that at least 7 of the 8 units were operational, the PFA Department found them to be “not functioning”.

8. When questioned about these discrepancies, Mr. N. Waziri, learned Standing counsel for the GNCTD, stated that unless the product, displayed a label stating “packaged drinking water” and was sold with a sealed cap the question of the applicability of the PFA Rules did not arise. In other words, according to him if the packaged drinking water did not conform to the requirements of the PFA Act, the PFA Rules and the BIS Act, no action under those statutes could be taken against the manufacturers of such packaged drinking water.

9. Mr. Ramesh Kumar, learned counsel appearing for the Director General, BIS took the stand that it is only when there is a misuse of the ISI mark can any action be taken under the BIS Act. He drew attention to the statement made in para 16 of the counter affidavit of the BIS to the following effect:

“.....for offences under Rule 49 (28) of the PFA Rules, 1955, the PFA Authorities alone can initiate action against any offenders, even though such violation may amount to offence under Section 14 of the BIS Act, 1986 inasmuch as there is no enforcement machinery under Section 26 of the BIS Act for prosecuting such offenders, even though such

offence is also punishable under Section 33 of the Act. Even otherwise, since the provisions of Rule 49 (28) of the PFA Rules, 1955 are specific, and the powers are vested in PFA Authorities under the PFA Act and the Rules framed thereunder to prosecute the offenders, HBIS would not be in a position to initiate investigations and prosecute such offenders.”

10. Ms. Rama Ahluwalia, learned counsel for the Petitioner, on the other hand, points out that both the Director General, BIS as well as the PFA Department of the GNCTD have proceeded on an incorrect understanding of the applicability of the law. She submits that the purpose of these statutes would be defeated if action had to be taken only against units that were conforming to the standards laid down thereunder.

11. The above submissions have been considered. The Statement of Objects and Reasons (‘SOR’) of the BIS Act underscores the need that “the public sectors and private sectors including small scale industries have to intensify efforts to produce more and more standard and quality goods so as to help in inducing faster growth, increasing exports and making available goods to the satisfaction of the consumers.” The need for establishing the BIS was to develop Indian Standards “not only in this country but even abroad.”

12. Section 2(a) of the BIS Act defines “article” to mean “any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured.” ‘Indian Standards’ have been defined under Section 2(g) to mean “the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to

any article or process indicative of the quality and specification of such article or process and includes – (i) any standard recognised by the Bureau under clause (b) of section 10; and (ii) any standard established and published, or recognised, by the Indian Standard Institution and which is in force immediately before the date of establishment of the Bureau”. Section 2(o) defines “process” to include any practice, treatment and mode of manufacture of any article.

13. Under Section 14 of the BIS, if the Central Government is of the opinion that it is expedient so to do, it may by order published in the official gazette notify any article or process of any scheduled industry which shall conform to the Indian Standard; and direct the use of the Standard Mark under a licence as “compulsory on such article or process.” Under Rule 49(28) of the PFA Rules use of the Standard Mark under the licence for ‘packaged drinking water’ has been made mandatory. The BIS Standards for packaged drinking water is specified in IS 14543:2004. The clauses thereunder state that water derived from any source of potable water is subject to certain treatments and that the treatments require bringing the article within certain permissible parameters.

14. Rule 5 of the PFA Rules provides that the “Standards of quality of the various articles of food specified in Appendices B, C and D to these Rules are as defined in those Appendices. Entry A-33 pertaining to ‘packaged drinking water’ (other than mineral water) in Appendix B to the PFA Rules is relevant for this purpose. The definition ‘packaged drinking water’ indicated therein is wide enough to include all forms of packaged drinking water. Entry No. A-33,

Appendix B of the PFA Rules reads as under:

“[A.33 Packaged Drinking Water (other than Mineral Water):

“packaged drinking water” means water derived from surface water or underground water or sea water which is subjected to hereinunder specified treatments, namely, decantation, filtration, combination of filtration, aerations, filtration with membrane filter depth filter, cartridge filter, activated carbon filtration, demineralization, remineralisation, reverse osmosis and packaged after disinfecting the water to a level that shall not lead to any harmful contamination in the drinking water by means of chemical agents or physical methods to reduce the number of micro-organisms to a level beyond scientifically accepted level for food safety or its suitability:

Provided that sea water, before being subjected to the above treatments, shall be subjected to desalination and related process;]

It shall be packed in clean [hygienic], colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) conforming to IS:10146 or polyvinyl chloride (PVC) conforming to IS: 10151 or polyalkylene terephthalate (PET) conforming to IS: 12252 or polypropylene conforming to IS: 10910 or foodgrade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.”

15. No doubt Rule 43 (ZZZ) (14) mandates that every package of water shall carry a declaration ‘crush the bottle after use.’ It only means that the above

requirements are to be mandatorily followed. Rule 49 (28) PFA Rules, inserted with effect from 29th March 2001, states that “no person shall manufacture, sell or exhibit for sale mineral water except under the BIS Certification Mark.” There can be no doubt therefore that there cannot be any sale of packaged drinking water unless it conforms to the standards laid down in the PFA Rules. Section 16 of the PFA Act is attracted when there is any import or manufacture for sale or distribution of packaged drinking water “in contravention of the provisions of this Act or any Rule made therein.” The punishment for violation of the Act in terms of Section 16 would include imprisonment for a term which will not be less than six months but which may extend to three years and with fine not less than Rs. 1,000.

16. The amendment to the PFA Rules by mention of Rule 49 (28) makes the use of a BIS Mark for packaged drinking water mandatory. Therefore, it is also a mandatory requirement under Section 14 of the BIS Act. The words ‘Indian Standard’ under Section 2(g) of the BIS Act have been defined as under:

“Indian Standard means the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to any article or process indicative of the quality and specification of such article or process and includes-

(i) any standard recognised by the Bureau under clause (b) of Section 10; and

(ii) any standard established and published, or recognised, by the Indian Standards Institution and which is in force immediately before the date of establishment of the Bureau”

17. Consequently, if packaged drinking water is sold without the usage of the BIS Mark, then the offence under Section 14 read with Section 33 of the BIS Act stands attracted. This prescribes the punishment for a terms which may extend to one year or a fine which may extend to Rs.50,000/-, or both. Under Section 34 “no court shall take cognizance of any offence punishable under this Act, save on a complaint made by or under the authority of the Government or Bureau or by any officer empowered in this behalf by the Government...”

18. It is plain to this Court that on a collective reading of the above Rules, it is mandatory for packaged drinking water to be manufactured, sold or exhibited for sale only with a BIS Certification Mark. Packaged drinking water has to conform to the stipulated Indian Standards Specification as per IS 14543:2004. Rule 37 of the PFA Rules requires the label to state that it is packaged drinking water and the label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in relation to the place of origin of the drinking water.

19. This Court straightway rejects the plea of the PFA Department of the GNCTD that where a packaged drinking water is found to be sold without using the label as mandated under Rule 43 (ZZZ) (13) of the PFA Rules or does not carry the BIS Mark in terms of Rule 49 (28) PFA Rules, no action can be taken against manufacturer or seller as to packaged drinking water. This is indeed a complete misreading of the Rule. The whole purpose of having such an elaborate control mechanism is to ensure that there is no sale

of packaged drinking water that is permitted except when it conforms to the PFA and the BIS Act.

20. As far as the FSSA is concerned, although Section 3(j) “food” means “any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and acknowledges ‘packaged drinking water’ the other operative provisions of the FSSA are not yet notified. In particular, Section 23 which talks of packaging and labeling of foods has not been notified as yet.

21. Consequently, a fairly important responsibility lies with the BIS to take effective corrective action for violation of the BIS Act. If, as submitted by the BIS, there is a shortage of staff that prevents it from taking effective steps, that should appropriately be overcome by having additional staff and with better co-ordination among the authorities.

22. It is made clear that for violation of the relevant provisions of the BIS Act, there is an independent remedy available under that Act. The remedy for violation of the BIS is also available in terms of the PFA Act. One remedy does not exclude the other.

23. Therefore, the prayer in the petition that a direction should be issued to the Respondents to take actions under the BIS Act and the PFA Act require to be accepted.

24. The action is sought to be taken against all the relevant units

manufacturing and selling packaged drinking water without a licence and without a BIS Certification Mark. In order to ensure the letter and spirit of the law, a task force be constituted by the Secretary, Ministry of Health & Family Welfare comprising a senior representative of the Department of PFA and the BIS, GNCTD both nominated by their respective Director Generals and a Senior Representative of the Delhi Police within a period of two weeks from today. The task force will co-ordinate amongst the various departments and constitute special crack units which will undertake surprise checks at various locations of manufactures of packaged drinking water and initiate strict action in terms of the provisions contained under the PFA as well as the BIS Act and the Rules made under those Statutes.

25. Considering that the water borne diseases are on the increase during the summer months, time is of the essence for all of the above directions. The letter and spirit of the Statutes require timely action to be taken by the GNCTD.

26. With the above clarifications and directions, the petition is disposed of.

S. MURALIDHAR, J.

MAY 20, 2010
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