

(2008) 11 DEL CK 0030
In the Delhi High Court
Case No : LPA No. 1649 of 2006

Bureau of Indian Standards		APPELLANT
	Vs	
Pepsico India Holdings P. Ltd. and Another		RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Prevention of Food Adulteration Rules, 1955 — Rule 37, 41, 49(28)
Trade Marks Act, 1999 — Section 9(2)

Citation : (2008) 155 DLT 588 : (2009) 3 ILR Delhi 92

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : B. Datta, ASG, Jose Chiramel and R.K. Tripathi, for the Appellant;
Arun Jaitley, A.S. Chandihoke, Amar Gupta, Deeraj Nair, Mayank Mishra and
Divyam Agarwal, for the Respondent

Judgement

Mukul Mudgal, J.—This Letters Patent Appeal by the Bureau of Indian Standards arises out of the impugned judgment and order dated 08.05.2006 delivered by the Learned Single Judge, whereby it was held that the use of the words PURE , CRISP , REFRESHING , PURIFIED AND PURITY GUARANTEED and the pictorial depiction of snow-capped mountain and the sun on the label of Respondent No. 1 M/s Pepsico India Holdings Pvt. Ltd. for packaged drinking water, was not misleading, and was not prohibited by any law, and that the impugned letters including those dated 24.04.2001, 13/14.09.2005, 05.10.2005 and 07.10.2005 cannot be enforced by the Appellant. The appeal has been preferred on the ground that the pictorial device SNOW-CAPPED MOUNTAIN and the expression PURITY GUARANTEED as used in the label of Respondent No. 1 creates confusion in the mind of general public regarding the origin nature, composition and properties of the Respondent No. 1 s product and suggest that the origin of the water being in the mountains, the product of the Respondent No. 1 is mineral water when admittedly the product of the Respondent No. 1 is only packaged drinking water and not packaged mineral water .

2. The learned Single Judge by his impugned judgment and order dated 08.05.2006 held as follows:

a) The definition of the word PURE and its cognates as well as the definition contained in the PFA Rules leaves no room for doubt that the correct connotation of the words packaged drinking water is not what is envisaged in Chemistry.

b) The meaning ascribed to the word PURE must be seen in the context of the standard prescribed by the Bureau or under the Prevention of Food Adulteration Act and Rules, since no useful purpose would be served at all in considering it in its absolutely pure state viz. distilled, as per the stance of the Bureau itself.

c) When an ordinary consumer reads the words PURITY GUARANTEED the thought which would come to his mind is that it is totally safe for human consumption and/or fully compliant with the standards set down by the Bureau. The impugned label assures the consumer nothing more than this. There is, therefore, no justification whatsoever for the prohibiting the use of the words PURITY GUARANTEED .

d) No infraction that Rule 37 of the Prevention of Food Adulteration Act, 1955 (hereinafter referred to as the PFA Act) mandates such justification has been established by the Bureau. So far as Rule 41 is concerned the subject food product, namely, packaged drinking water, is not an imitation.

e) If the argument of the Bureau is to be sustained, a blanket ban would come into effect on the use of the word pure thereby rendering the phrase imitation of any food totally otiose. Such an interpretation is not permissible. Today, various chemicals are employed in food articles especially for flavor. It is in that context that use of the word pure is not allowed.

f) The primary function of consuming water is to quench ones thirst, which is the same as preventing dehydration. The common perception in hot or tropical countries is that cold water is not only satiating but also refreshing. Even so, the stand of the Respondent No. 1 that the pictorial device or artwork on the label showing snow clad mountains misleads the consumer is stretching the argument beyond reasonable limits.

3. The Learned Single Judge in Para 18 of the impugned judgment held as follows:

For these manifold reasons I am satisfied that the writ petition is well founded. It is declared that the use of the words PURE , CRISP , REFRESHING , PURIFIED and PURITY GUARANTEED on a label pertaining to packaged drinking water does not offend any provisions of law. It is further held that the use of the pictorial device/artwork on the label is not misleading and is not prohibited by any law. The impugned letters including those dated 24.09.2001, 13/14.09.2005, 05.10.2005 and 07.10.2005 cannot be enforced by the Respondent.

4. The brief facts of the case as per the Appellant are as follows:

- a) The Appellant Bureau of Standards is a statutory body established under the Bureau of Indian Standards Act 1986 (hereinafter referred to as the BIS Act) to promote harmonious development of the activities of standardization, marking and quality certification of goods and matters incidental thereto, throughout the country. The Respondent No. 1 is Pepsico India Holdings Pvt. Ltd. and the objectionable label AQUAFINA affixed to its packaged drinking water which contains a pictorial depiction of snow capped mountains is being manufactured and marketed by Respondent No. 1.
- b) Standards are established as per procedure provided for in the Act and the Rules framed there-under.
- c) The Directorate General of Health Services vide letter dated 27.04.2001 informed the Appellant that the words pure , crisp and refreshing would contravene Rule 37 of the Prevention of Food Adulteration Rules 1955 (hereinafter referred as PFA Rules) as they would be misleading the public. The Appellant was therefore directed to take appropriate actions as such words are not allowed to be used on the label/ advertisement of these products.
- d) The Appellant Bureau in the circumstances vide letter dated 23.07.2001 directed Respondent No. 1 not to use labels for Packaged Drinking Water with the words Pure , Crisp and Refreshing beyond 29.09.2001. The Respondent No. 1 therefore represented to the Ministry of Health vide letter dated 13.09.2001, followed by letter dated 19.09.2001 requesting them to reconsider the decision and to allow them to continue to use terms such as pure etc. in the label for Packaged Drinking Water.
- e) The Government did not accede to the said requests of Respondent No. 1, and instead, the Directorate General of Health Services vide letter 24.09.2001 informed the Bureau that any product that is in accordance with the PFA standards cannot be treated as purer than others that also comply with the same standards, and hence use of the objectionable words by Respondent No. 1 in its labels could mislead public in general.
- f) The Respondent No. 1 changed the words, pure , crisp and refreshment into purified drinking water which was found equally objectionable, and hence Respondent No. 1 was directed by the Lucknow Branch of the Bureau vide letter dated 25.02.2002 to discontinue the same. On receipt of the letter, Respondent No. 1 vide reply dated 15.02.2002 sought permission from the Bureau to continue the same.
- g) The Bangalore Branch of the Bureau found that Respondent No. 1 used the words Purity Guaranteed and Purified on the label, which was objected to by the Branch which directed Respondent No. 1 not to use such words on the label vide letter dated 11.04.2002. The Respondent No. 1 did not object to the same, but rather vide reply dated 24.04.2002 informed the Bureau that they had changed the words purified drinking water to packaged drinking water on the label.

- h) The Respondent No. 1 continued to use the label with the snow-capped mountain and the sun at the background, with words such as Purity Guaranteed .
- i) Hence the Respondent No. 1 was called upon by the Bangalore Branch of the Bureau vide letters dated 24.03.2005, and 21.04.2004 to discontinue use of the same.
- j) The Respondent No. 1 vide their replies dated 22.04.2004 and 26.04.2004 to the aforesaid letters, informed the Bureau that it would take at least 3 to 4 months for them to exhaust the existing inventory of labels, after having got the same printed according to their whims and fancies.
- k) In view of the above categorical stand taken by the Government, the Respondent No. 1 vide letter dated 28.03.2005 submitted a fresh label for approval. Though the said label was also found by the Bureau to be objectionable, the Bureau decided to take up the matter once again with the Government, and in the meanwhile allowed Respondent No. 1 to continue to use the existing labels as an interim measures.
- l) The Bureau not to permit any claims on the labels of packaged drinking water and mineral water with immediate effect. The headquarters of the Bureau therefore instructed its branches throughout the country accordingly.
- m) The Bangalore branch of the Bureau therefore vide letter dated 05.10.2005 repeated the direction to the Respondent No. 1 to discontinue the objectionable words within 21 days of receipt thereof, followed by similar letters dated 07.10.2005 issued by the Calcutta, Lucknow, Mumbai and Ahmadabad branches of the Bureau to Respondent No. 1
- n) The Appellant in view of the Respondent No. 1 having not complied with the direction contained in the Bangalore Branch Office letter dated 05.10.2005 to discontinue the use of the offensive labels within 21 days of receipt vide letter dated 27.10.2005 called upon the Respondent No. 1 to discontinue use of the labels which contained the objectionable words, and also to inform the Bureau regarding the stocks of unapproved labels lying with them.
- o) The Respondent No. 1 thereafter filed Civil Writ Petition No. 20909 of 2005 before this Court, challenging the letter dated 27.10.2005, as also letters dated 24.09.2001, 25.02.2002, 19.10.2004, 05.10.2005 and 07.10.2005 of the Bureau.

5. The allowing of the writ petition by the learned Single Judge by the impugned judgment dated 8th May, 2007 has led to the present appeal.

6. The learned Additional Solicitor General Shri B. Datta appearing on behalf of the appellant Bureau of Indian Standards contended as follows:

(a) The centre of controversy in the present appeal is the label Aquafina which is used by the Respondent No. 1. It is objected to by the appellant on the ground that the pictorial device SNOW-CAPPED MOUNTAIN as used in the label suggests

that the Packaged Drinking Water being manufactured and marketed by the Respondent No. 1 has its origin in the mountains indicating the product to be sourced from the mountains which is therefore a misleading claim regarding the origin of the water. The other objection is on the expression PURITY GUARANTEED which creates confusion in the mind of the general public regarding nature, composition and properties of the Packaged Drinking Water.

(b) He laid emphasis on the genesis of power and authority of Bureau of Indian Standards (BIS). The jurisdiction of BIS is not only with regard to laying down standards but also labelling. To strengthen his argument he emphasized on the provisions of law under the various Acts and Rules. BIS is empowered u/s 10(1) (a) of the BIS Act, to establish, publish and promote the Indian Standard, in relation to any article or process. Indian Standard has been defined u/s 2(g) of the Act 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 any standard recognized by the Bureau under Clause (b) of Section 10 and any standard established and published, or recognized, by the Indian Standards Institution and which is in force immediately before the date of establishment of the Bureau. Mark has been defined u/s 2(l) of the Act which include a device, brand, heading, label, ticket, pictorial representation, name, signature, word, letter or numeral or any combination thereof. Specification has been defined u/s 2(s) of the Act to mean a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture of other characteristics to distinguish it from any other article or process

Standard Mark means the Bureau of Indian Standards Certification Mark specified by the Bureau to represent a particular Indian Standard and also includes any Indian Standards Institution Certification Mark specified by the Indian Standards Institution. BIS is also empowered u/s 10(1)(d) of the Act to grant, renew, suspend or cancel a licence for the use of the Standard Mark. BIS u/s 10(p) of the Act can perform such other functions as may be prescribed. If the Central Government notifies u/s 14 of the Act that an article or process should conform to the Indian Standard and directs the use of the Standard Mark under a licence as compulsory on such article or process than licence under the Act is mandatory. Standard Mark under a licence for Packaged Drinking Water has been made mandatory under Rule 49(28) PFA Rules. Section 11 of the BIS Act states that no person can use in relation to any article or process the Standard Mark or any colorable imitation thereof unless such article or process conforms to the Indian Standard. Section 24(1) of the Act states that the Bureau in the exercise of its powers or the performance of its functions under the Act, will be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. Section 24(2) of the Act further states that the decision of the Central Government whether on a question of policy or not would be final.

(c) The BIS standard for the packaged drinking water is defined in IS 14543: 2004 Clause 3.2 states that water derived from any source of potable water is subject to certain treatments. Clause 5.2 states that the treatments require bringing the article within certain permissible parameters, (1) Organoleptic and Physical, (2) General, (3) toxic substances and (4) radio-active residues. Clause 7.2.3 of IS : 14543 : 2004 deals with the labelling prohibition that the use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of drinking water is prohibited. Rule 37 of the PFA Rules 1955 provides that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food contained in the package, in relation to the place of origin of the said food. Entry No. A-33, Appendix B of the PFA Rules 1955 which is at par with the labelling prohibitions under Clause 7.2.3 of IS : 14543 : 2004, also does not allow any misleading claim regarding nature, origin, composition and properties of water put on sale. Therefore, he contended that the objectionable expression purity guaranteed on the label of the Respondent No. 1 for Packaged Drinking Water is a misleading claim regarding nature, composition and properties of the water, while the depiction of the snow-capped mountain in the background therein is a misleading claim regarding the origin of the water.

(d) The learned Counsel for the appellant contended that Packaged Drinking Water (as per IS 14543: 2004) is derived from potable water drawn from any source, and it undergoes treatment, whereas Packaged Mineral Water (as per IS 13428: 1998) is drawn only from the mountain, and hardly undergoes any treatment. Packaged Drinking Water merely conforms to the parameters of residues as per requirements specified in IS 14543: 2004, and therefore cannot be described as pure water . At the most it can be said to be conforming to the Indian Standard IS 14543: 2004 and no further. The word pure would even otherwise be confusing, as there are three formulated Indian Standard namely (1) Packaged Drinking Water as per IS 14543 : 2004, (2) Packaged Mineral Water as per IS 13428 : 1998 and (3) Drinking Water as per IS 10500 : 1991, all three of which are distinct and separate. Water is not a single homogenous unit (like oil etc.) so as to be declared as pure . The pure water (where the residues as per various parameters prescribed are nil) would only be distilled water used in batteries, which is not fit for human consumption, as it will pull out all the minerals from the body.

(e) The expression Pure is misleading and confusing, particularly when there are three different standards prescribed by BIS, i.e. Packaged Drinking Water, Packaged Mineral Water and Drinking Water i.e. Tap Water. At the most the Respondent No. 1 could only say that the Packaged Drinking Water conforms to IS 14543: 2004 and no further, whereas by the impugned judgment, the Respondent No. 1 has been permitted to use a false, misleading and confusing expression Purity Guaranteed , which is not permissible under Rule 37 of the PFA Rules 1955 or the specifications for IS 14543: 2004 The learned Single Judge has

merely expressed a subjective view on the matter, rather than examining as to whether the expression Purity Guaranteed violated Clause 7.2.3 of specifications for IS 14543 : 2004 (equivalent to Entry No. A-33, Appendix of the PFA Rules, 1955) with regard to statement which may create confusion in the mind of the public or in any way mislead the public about the nature, composition and properties of the water put on sale. The ordinary consumer can only be given the assurance by the Respondent No. 1 that the Packaged Drinking Water conforms to IS 14543: 2004 formulated by BIS, and no further. The Respondent No. 1 cannot be the torchbearer of a different standard, much less under the banner of Purity Guaranteed as if they would be the entity to decide as to what purity is.

(f) The learned Senior Counsel further contended that the Central Government raised an objection on the label vide letters dated 27.04.2001 and 24.09.2001 objecting to use of words such as pure on the label of drinking water, and vide letter dated 14.09.2005 directed BIS not to allow any claims on labels of Packaged Drinking Water. Further, an Expert Group on Packaged Drinking Water and Mineral Water set up by the Government in its meeting on 19.10.2004 came to the conclusion that claims of the type pure , purity guaranteed were misleading and violative of the labelling prohibitions under the PFA Rules, 1955: hence recommended that the same ought not to be allowed on the labels of these products. Pursuant to the above directions of the Central Government BIS directions to the Respondent No. 1 No. 1 regarding the label vide letter dated 25.02.2002, 11.04.2002, 05.10.2002, 07.10.2005 and 27.10.2005 directed the Respondent No. 1 No. 1 not to use expressions such as pure , purity guaranteed etc. on the labels of Packaged Drinking Water. BIS vide letter dated 07.10.2005 directed the Respondent No. 1 not to use the label with the words purity guaranteed and the pictorial device depicting of snow- capped mountain at the back, as it suggested that the water was drawn from the mountain- which could have been used only in respect of Packaged Mineral Water. The Respondent No. 1 vide letter dated 24.4.2002 informed the BIS that the objectionable words Purified drinking water had been removed and replaced with Packaged drinking water which was factually not correct since the Respondent No. 1 vide letter dated 26.4.2004 sought 3-4 months time to exhaust the existing labels. The Respondent No. 1 vide letter dated 24.10.2005 agreed to remove the words Purity granted but sought 6 months time to exhaust the existing labels.

(g) The Respondent No. 1 holds BIS Licence No. CM/L-9372890 for Packaged Drinking Water as per IS 14543: 2004 Therefore, in view of the various relevant provisions of the BIS Act and the PFA Rules, BIS not only has jurisdiction in regard to laying down the standards but also impose labeling prohibitions.

7. Mr. Arun Jaitley and Mr. A.S. Chandhioke, the learned senior counsel for the Respondent No. 1 while defending the conclusions of the learned Single Judge contended that:

(a) BIS does not have any jurisdiction to deal with issues concerning labeling. The BIS Act is restricted only to laying down and regulating standards of articles

and does not deal with labeling of articles. The Statement of Objects and Reasons provides that the Bureau is set up as a statutory institution for formulating standards in quality of goods. Powers conferred upon BIS pertain only to standardization and quality of goods.

(b) The entire Act deals with only laying down and regulating standards of articles and is alien to labeling provisions or prohibition. It is well settled that a statutory authority must act within the four corners of the statute. Any action taken by a statutory authority has to be in pursuance of a statutory provision. A Statutory authority cannot act beyond the statutory provision and any such action would be ultra vires.

(c) To strengthen his above contention that BIS can only lay down standards and regulate standards alone, he relied upon relevant provisions of the various Acts. There is no other reference to labels or the manner/mechanism to regulate labels, in the entire Act, except for reference to the words device, label and pictorial representation in Section 2(1) of the Act, which defines mark . Section 10(p) of the Act which gives general power to the Bureau to perform such other functions as may be prescribed cannot be understood to mean that BIS can regulate even those areas which are not covered within the purview, scope and extent of the Act. Section 10(p) of the Act has to be read in context of the principle of ejusdem generis with the various other provisions of the Act. Section 10(p) of the Act draws color from the preceding sections, as the general follows the specific. The powers referred to in sub Section 10(p) refers to powers of like nature as enumerated specifically in Sub-sections (a) to (o) of Section 10 and cannot mean to include powers not possibly contemplated or inconsistent with discernable objects and the purpose of the Act.

(d) Section 11(2) of the Act deals with the Indian Standard Mark only and not with regard to any other mark. The instant section relates to deceptive similarity to ISI mark and does not pertain to alleged deception as sought to be conveyed. Reference to Section 11 of the Act, made by the Appellant during the course of arguments, is completely misplaced and erroneous. Section 11 deals with prohibition of improper use of standard mark and not any other mark , as is normally envisaged. Standard mark has been defined u/s 2(t), to mean the Bureau of Indian Standards Certification Mark specified by the BIS, and does not mean mark as defined u/s 2(1) of the Act.

(e) Reliance cannot be placed on Section 24 of the Act also as it deals with the policy directions only. It is submitted that Section 24 of the Act, requires the BIS to follow such directions on questions of policy issued by the Central Government in exercise of its powers or the performance of its functions under the Act . The wording of Section 24 is clear and unambiguous, insofar as carrying out the directions of the Central Government is concerned. However, the power, which can be so exercised u/s 24 is restricted to the power and functions conferred under the Act and not to powers which are beyond the scope and purview of the Act. As stated above, there is no power or provision in the Act, which confers

power on BIS to regulate labeling provisions and therefore assuming that BIS has complied with Section 24, even then BIS is not vested with any power that could have been exercised within the scope and purview of the Act and Rules framed thereunder in relation to labeling.

(f) The document relied upon by the Appellant at pages 109, 92 and 96 of the Appeal paper book, cannot be considered as a direction of the Central Government contemplated u/s 24 of the Act. The discussion contained in the minutes at page 109 are at best, indicative and do not convey any decision, as contemplated u/s 24 of the Act. In fact, there is a specific reference in the said document, wherein the law officer/legal department of the concerned Ministry has not given any view on the phrase, viz. Purity Guaranteed, used by the Respondent No. 1 herein. Furthermore, there is no discussion on any pictorial depiction that may be considered as misleading or allegedly creating confusion in the minds of public regarding the nature, origin, composition and properties of Packaged Drinking Water sold by Respondent No. 1.

(g) Assuming that all the three referred above are directions u/s 24 of the Act, even then the BIS could not have acted beyond the power specifically conferred upon it under the Act or the Rules framed there under. It is submitted that essential functions of an authority under a particular Act cannot be delegated to another statutory authority established under another statute without express provision to that effect. Therefore, BIS in the garb of following purported directions u/s 24 of the BIS Act cannot usurp powers of another statutory authority or seek to legitimize its illegal and void actions.

(h) The Appellant has relied upon Clause 7.2 of the Indian Standard Packaged Drinking Water Specification known as 14543:2004. The Foreword to IS 14543:2004 clearly provides that the specifications were being issued considering the consumers health and safety, to ensure that the packaged water offered for sale is safe and free from harmful organisms. The specifications were undertaken to incorporate technological development, check list for hygienic requirements and consumer requirements. The Foreword to the Specification clearly provides that the Specifications are subject to restrictions imposed under the Rules, wherever applicable.

(i) A mere reading of the Foreword to the Specification demonstrates that the Specification is limited to ensuring that the Packaged Drinking Water being offered for sale is safe and free from harmful organisms. Therefore, it is apparent that this Specification was also issued with respect to the content/quality of the Packaged Drinking Water and not with regard to the label. BIS, while issuing the Specification was aware that the Specification is subject to BIS powers and restrictions imposed under the Rules. It is a matter of record that none of the provisions of the BIS Act or the Rules framed thereunder provide any power to the BIS in relating to labeling of articles. The Scope of the Specification (at page 44 of the Appeal), also makes it clear that the Specification was issued for prescribing the requirement and methods of sampling and testing of drinking

water offered for sale in packaged form. The entire Specification deals only with the content of Packaged Drinking Water except Clause 7.2, which is beyond the scope and power of BIS and therefore, ultra vires the Act and the Rules.

(j) Clause 7.2 of the Specification has been lifted bodily and copied from Entry A-33 of Appendix-B of the PFA Rules. It is submitted that in the absence of any power conferred upon the BIS by the Act or the Rules framed there under, BIS could not have incorporated Clause 7.2 in the Specification and/or relied upon it to issue the impugned directives. It is well settled that a statutory authority cannot borrow powers from another statutory enactment in purported exercise of functions under its parent statute. The powers conferred upon the statutory authority can be so exercised only within the scope and extent of such power and it cannot travel beyond its parent statute. In the present case, the Act being a self defined code in itself, cannot borrow provisions from another Act and incorporate it in the Specification purportedly in exercise of powers under the Act or the Rules. Importing powers from another enactment upsets the scheme of the BIS Act, which renders the imported provision as ultra vires and hence null and void. If a rule made by a rule making authority is outside the scope of its power, it is void and it is not at all relevant that its validity has not been questioned for a long period of time; if a rule is void it remains void whether it has been acquiesced to or not.

(k) It is a matter of record that the Packaged Drinking Water sold by the Respondent No. 1 conforms to the standard and quality requirements laid down under the Specification. The Appellant has itself admitted to the same both in the Writ Petition proceedings as well as in the present Appeal. It therefore, follows that the Respondent No. 1 is in compliance with the Specification and the provisions of the Act.

(l) It is a matter of record that BIS till date has not produced any complaint or representation from any person or body, either in the Writ or Appeal proceedings, that the public has been misled or confusion has been created in the minds of the public with respect to the phrase Purity Guaranteed or the pictorial depiction on the label. It is apparent that the action taken by BIS was in the absence of any cogent evidence or material and based on its own whims and fancies. Therefore, the action of BIS lacks bonafide and is thus arbitrary and misconceived.

(m) As stated above, Clause 7.2 is identical to Entry A-33 of Appendix B of PFA Rules, Violation of any of the provisions of the PFA attracts penal provision leading to imprisonment. It is a matter of record that till date PFA authorities have not issued any notice to the Respondent No. 1 directing removal of the alleged offending labels. In the present facts and circumstances, PFA authorities have the power and jurisdiction to take action against any offending labels. However, the fact that PFA authorities have till date not initiated or even contemplated any action against the Respondent No. 1, per se shows that the label used by the Respondent No. 1 with the phrase Purity Guaranteed and the

pictorial depiction of mountains is not offending and/or in violation of Entry A-33 of Appendix B of PFA Rules.

(n) BIS has discriminated against the Respondent No. 1 herein inasmuch as admittedly there are several other companies selling Packaged Drinking Water with labels containing phrases signifying the quality of the content of the packaged water as well as pictorial depictions of mountains. BIS has, however, chosen to discriminate against the Respondent No. 1 by initiating action only against the Respondent No. 1. Such action being discriminatory is in violation of Article 14 of the Constitution of India.

(o) The pictorial depiction of a mountain on the label along with the phrase Purity Guaranteed is a registered trademark of the Respondent No. 1 Company in India, with the trademark certification granted by the Registrar of Trademark under the Trademark Act, 1999. The said trademark is registered in over 150 jurisdictions across the world. It is submitted that Section 9(2) of the Trademark Act provides for an absolute ground of refusal if the trademark is misleading in any manner or is likely to create confusion in the minds of the public. However, the Trademark Authority in the present case, after applying its mind and taking into consideration all relevant aspects, has come to the conclusion that the pictorial depiction or the phrase contained in the Respondent No. 1 s trademark is not objectionable or misleading in any manner. It is well settled that the statutory authorities cannot take contrary view or impose contradictory obligations. The State, which is represented by the Department, can only speak with one voice and have to act in unison. In view of the fact that one statutory authority has come to categorical finding in favour of the Respondent No. 1, it does not lie within the domain of the BIS to object to the Respondent No. 1 using its trademark with the phrase and pictorial depiction.

(p) As submitted above the pictorial depiction of mountain and sun on the Respondent No. 1 s label is the Respondent No. 1 s registered trademark. The said pictorial depiction, in no manner per se, conveys that the water is drawn from snow-capped mountains and is therefore mineral water. The said pictorial depiction conveys purity of the product. Further, the label of the Respondent No. 1 s product prominently declares the words Packaged Drinking Water below the pictorial depiction and the words Purity Guaranteed .

(q) The phrase, Purity guaranteed , at best, only conveys to the consumers that the Respondent No. 1 guarantees the quality of the product as safe for human consumption and that it does not contain harmful and undesirable substance. Purity guaranteed does not mean to convey that the water is pure H₂O, since such pure water is not fit for human consumption for its known chemical properties.

8. In our view the Centre of controversy in the present appeal is the pictorial device Snow-Capped Mountain and the expression purity guaranteed in the label of article Aquafina owned by the Respondent No. 1. The learned senior counsel

for the appellant have contended that under the BIS Act it has power and jurisdiction not only with regard to laying down and regulating standards but also has the power to impose labeling provisions or prohibitions. The learned senior counsel for the Respondent No. 1 Mr. Arun Jaitley and Mr. A.S. Chandhioke, apart from supporting the learned Single Judge's judgment have also contended that the BIS Act is restricted only to laying down and regulating standards of articles and does not deal with labeling of article and borrowing ipso facto of provisions from another statute such as the Prevention of Food Adulteration Act and Rules is not legally permissible. However, it is necessary to understand the legislative intent underlying the act and the relevant rules there under having regard to the object and purport of the statute which it seeks to achieve.

9. The statutory provisions of law relevant to the present appeal are as follows:

A. The Bureau of Indian Standards Act, 1986

(I) Prefatory Note Statement of Objects and Reasons. The Indian Standards Institution was registered as a society under the Societies Registration Act, 1860 in January, 1947 to prepare and promote standards. The Indian Standards Institution (Certification Marks) Act, 1952 covers the operation of the certification marks scheme, while the formulation of standards and other related work is not governed by any legislation.

2. When the Indian Standards Institution was established, the industrial development in the country was still in its infancy. During the last 39 years, there has been substantial progress in various sectors of the Indian economy. The industrial and agricultural sectors have undergone structural and qualitative transformation under the Five-Year Plans. In this context a new thrust has to be given to standardization and quality control. A national strategy for according appropriate recognition and importance of standards is to be evolved and integrated with the growth and development of production and exports in various sectors of the national economy. 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.

3. The standards making organizations for formulating standards have has to be given due recognition and status to enable it to discharge its functions effectively and efficiently in acceptance and promotion of Indian standards not only in this country but even abroad. Apart from the representations of the industry, such an organisation should also have adequate representation of users and consumer organizations, Central and State Governments, research organizations and regulatory agencies. For all these reasons, it is considered necessary to have the organisation for standards as a statutory institution which will have adequate autonomy and flexibility in its operations and will also ensure that priority is given to various aspects of its functions in line with national priorities.

4. To achieve these objectives, it is proposed to set up a Bureau of Indian

Standards as a statutory institution.

5. The Bill provides that the Bureau of Indian Standards will be a body corporate and specifies its composition and the constitution of an Executive Committee to carry on the day to day activities of the Bureau. The proposed Bureau will take over the staff, assets and liabilities of the Indian Standards Institution and perform all functions which are now being performed by Indian Standards Institution. The Bill will provide access to the Bureau's standards and certification marks to suppliers of like products originating in General Agreement on Trade and Tariff (GATT) code countries. The Bill also makes provision for the making of grants and the advancing of loans to the Bureau by the Central Government and the necessary provisions for the better administration of a body corporate like constitution of fund, accounts and audit etc. The Bill provides for the repeal of the Indian Standards Institution (Certification Marks) Act, 1952.

(II) The Preamble states that an Act to provide for the establishment of a Bureau for the harmonious development of the activities of standardization, marking and quality certification of goods and for matters connected herewith or incidental thereto.

(III) Section 2 of the Act lays down the definitions:

(a) 2(b) Bureau means the Bureau of Indian Standards established u/s 3.

(b) 2(g) 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 recognized by the Bureau under Clause (b) of Section 10; and

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

(c) 2(l) Mark includes a device, brand, heading, label, ticket, pictorial representation, name, signature, word, letter or numeral or any combination thereof.

(d) 2(s) Specification means a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture of other characteristics to distinguish it from any other article or process.

(e) 2(t) Standard Mark means the Bureau of Indian Standards Certification Mark specified by the Bureau to represent a particular Indian Standard and also includes any Indian Standards Institution Certification Mark specified by the Indian Standards Institution.

(IV) 10. Functions of the Bureau. (1) The Bureau may exercise such powers and perform such duties as may be assigned to it by or under this Act and, in particular, such powers include the power to

(a) establish, publish and promote in such manner as may be prescribed the Indian standard, in relation to any article or process;

(b) recognise as an Indian standard, in such manner as may be prescribed, any standard established by any other Institution in India or elsewhere, in relation to any article or process;

(c) specify a Standard Mark to be called the Bureau of Indian Standards Certification Mark which shall be of such design and contain such particulars as may be prescribed to represent a particular Indian standard; (d) grant, renew, suspend or cancel a licence for the use of the Standard Mark;

(e) levy fees for the grant or renewal of any licence;

(f) make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without a licence;

(g) seek recognition of the Bureau and of the Indian Standards outside India on such terms and conditions as may be mutually agreed upon by the Bureau with any corresponding institution or organisation in any country;

(h) establish, maintain and recognise laboratories for the purposes of standardisation and quality control and for such other purposes as may be prescribed;

(i) undertake research for the formulation of Indian Standards in the interests of consumers and manufacturers;

(j) recognise any institution in India or outside which is engaged in the standardisation of any article or process or the improvement of the quality of any article or process;

(k) provide services to manufacturers and consumers of articles or processes on such terms and conditions as may be mutually agreed upon;

(l) appoint agents in India or outside India for the inspection, testing and such other purposes as may be prescribed;

(m) establish branches, offices or agencies in India or outside;

(n) inspect any article or process, at such times and at such places as may be prescribed in relation to which the Standard Mark is used or which is required to conform to the Indian Standard by this Act or under any other law irrespective of whether such article or process is in India or is brought or intended to be brought

into India from a place outside India;

(o) co-ordinate activities of any manufacturer or association of manufacturers or consumers engaged in standardisation and in the improvement of the quality of any article or process or in the implementation of any quality control activities;

(p) perform such other functions as may be prescribed.

(2) The Bureau shall perform its functions under this section in accordance with, and subject to, such rules as may be made by the Central Government.

(V) Section 24 Power of Central Government to issue directions- (1) Without prejudice to the foregoing provisions of this Act, the Bureau shall, in the exercise of its powers or the performance of its, functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Provided that the Bureau shall, as far as practicable, be given an opportunity to express its views before any direction is given under this Sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

B. PREVENTION OF FOOD ADULTERATION ACT, 1955

(I) Rule 37 of the PFA Rule reads as under:

37. Labels not to contain false or misleading statements.- A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food:

Provided that this rule shall not apply in respect of establishment trade or fancy names of confectionery, biscuits and sweets such as Barley, Sugar, Bulls Ice-cream Cracker, or in respect of aerated waters such as Ginger Beer or Gold Spot or any other name in existence in international trade practice.

(II) Entry No. A-33, Appendix B of the PFA Rules, 1955 reads as under:

No claims concerning medicinal (preventative, alleviative or curative) effects shall be made in respect of the properties of the product covered by the standard. Claims of other beneficial effects related to the health of the consumer shall not be made. The name of the locality, hamlet or specified place may not form part of the brand name unless it refers to a packaged drinking water collected processed at the place designated by that trade name. The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of such waters put on sale is prohibited.

(III) Rule 49 (28) of the PFA Rules provides as under:

(28) No person shall manufacture, sell or exhibit for sale packaged drinking water except under the Bureau of Indian Standards Certification Mark. (D) Hence, in consonance with the above provisions of law, the labeling prohibitions in Clause 7.2 of IS 14543 : 2004 have been formulated by the Bureau under the Bureau of Indian Standards Act 1986 read with the Rules and Regulations framed there under, state as under:

7.2 Labelling Prohibitions 7.2.1 No claims concerning medicinal (preventative, alleviative or curative) effect shall be made in respect of the properties of the product covered by the standard. Claims of other beneficial effects related to the health of the consumer shall not be made. 7.2.2 The name of the locality, hamlet or specified place may not form part of the brand name unless it refers to a packaged drinking water collected processed at the place designated by that brand name. 7.2.3 The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of drinking water is prohibited.

10. What has to be considered is the genesis of power and authority conferred on the BIS under the BIS Act. u/s 10(1)(a) of the BIS Act, BIS is empowered to establish, publish and promote the Indian Standards, in relation to any article or process. Indian Standard has been defined u/s 2(g) of the Act 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. Specification has been defined u/s 2(s) of the Act to mean a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture of other characteristics to distinguish it from any other article or process.

11. Section 24(1) of the Act states that the Bureau in the exercise of its powers or the performance of its functions under the Act, will be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. Section 24(2) of the Act further states that the decision of the Central Government whether a question is one of policy or not would be final.

12. Rule 49(28) of the PFA Rules mandates that the packaged drinking water cannot be sold without the certification mark of Bureau of Indian Standards. In our view the jurisdiction of the Appellant BIS is attracted as the Respondent No. 1 admittedly sells packaged drinking water. In fact, the sale cannot be resorted to without the BIS mark. Since Packaged Drinking Water has been notified to compulsorily carry BIS Certification under PFA Rules, therefore, BIS has been conferred power to regulate labeling of articles particularly when Section 2(1) of the Act defining a mark clearly includes label. Thus, every sale of packaged drinking water must comply with BIS norms.

13. The BIS Standard for the packaged drinking water is defined in IS 14543: 2004 Clause 3.2 states that water derived from any source of potable water is subject to certain treatments. Clause 7.2 of IS: 14543: 2004 which is the bone of contention between both the parties deals with the labelling prohibition that the use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of drinking water is prohibited. Rule 37 of the PFA Rules provides that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food contained in the package, in relation to the place of origin of the said food. Entry No. A-33, Appendix B of the PFA Rules which is at par with the labelling prohibitions under Clause 7.2 of IS: 14543: 2004, also does not allow any misleading claim regarding nature, origin, composition and properties of water put on sale. The main contention of the Respondent No. 1 is that the entire specification deals only with the content of packaged drinking water except Clause 7.2 which is beyond the scope and power of BIS and, therefore, ultra-vires the Act. However, we are of the opinion that the provision of BIS Act and the Specification framed thereunder for packaged drinking water have to be construed widely so as to provide adequate power to the BIS in relation to the labelling of articles. Therefore, Clause 7.2 of the Specification of the Indian Standard for packaged drinking water cannot be construed as ultra-vires the Act. The Respondent No. 1 cannot escape the impact of the provisions of the BIS Act and the specifications framed thereunder, as the Respondent No. 1 holds a valid BIS licence No. CM/L-9372890 for packaged drinking water under IS 14543: 2004 We are also unable to agree with the Respondent No. 1's plea that the borrowing of provisions from another statute is not valid. Quite apart from the fact that no authority was cited for this plea it is not uncommon for statutes to refer to other statutes for the purposes of definitions and this cannot be termed illegal. Furthermore, both Rule 37 of the PFA Rules and Entry A33 Appendix B of the PFA Rules do not permit any misleading claims regarding the nature, origin composition or properties of the product. Rule 49(28) of the PFA Rules prohibits the sale of the packaged drinking water without the certification of BIS. The BIS having fixed specification as per the PFA Rules under IS 14543:2004 has full jurisdiction to enforce its standards as without the BIS mark packaged drinking water cannot be sold. Clause 7.2.3 of the BIS reads as follows: 7.2.3 The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of drinking water is prohibited. Thus, the mandate of Clause 7.2.3 being fully valid and applicable has to be complied with by the Respondent No. 1.

14. The power assigned to BIS u/s 10(1) of the BIS Act, stipulates that the Bureau can exercise such powers and perform such duties as may be assigned to it and under Sub-section 10 (1) Clause (p) to perform such other functions as may be prescribed. It is not possible to construe the words perform such other

function as may be prescribed in a narrow sense so as to defeat the very object of the BIS Act as the preamble of the Act mandates. These words must be given the widest possible amplitude in order to secure the purpose of the Act. It is therefore, not possible to construe the provisions contained in Clause (a) to (o) of Sub-section 1 of Section 10 as having the effect of narrowing the impact of Clause (p) of Sub-section 1 of Section 10. Thus, the contention raised by the Respondent No. 1 that the power referred to in Clause (p) refers to power of like nature as enumerated in specifically in Clause (a) to (o) cannot be accepted as such an interpretation would have the effect of curtailing the very purpose and object of the BIS Act.

15. In our view, when the Central Government has power u/s 24 of the Act to give directions even on the question of policy, then the statutory enactments such as the PFA certainly have to be construed as a mandate of the Central Government. In fact such a statute stands on stronger footing than mere executive instructions in the form of directions u/s 24 of the Act. Thus, the plea of Shri Jaitely that the BIS is attempting to usurp the jurisdiction of the PF Act cannot be sustained. Even otherwise we have clearly held that Rule 49(28) of the PFA Rules clearly permits sale of packaged drinking water only under the BIS mark giving clear jurisdiction under the BIS Act to BIS to lay down norms.

16. The entire reasoning of the learned Single Judge on the issue of misleading pictorial representation of snow capped mountains is as under: The argument that the label falsely and misleadingly depicts that the water is drawn or derived from mountain sources because of the depiction of snow capped mountains on the label has now to be dealt with. Persons who purchase bottled water such as Aquafina can easily distinguish between packaged mineral water and packaged drinking water. Learned Counsel for the respondent has not contended that the words packaged drinking water have been printed in such a manner as to escape the notice of the consumer. I fail to appreciate that there is any possibility of a discerning consumer, such as one who is desirous of consuming only mineral water, being misled into purchasing Aquafina believing it to be mineral water drawn from snow-capped mountains. 16. The primary function of consuming water is to quench one's thirst, which is the same as preventing dehydration. The common perception in hot or tropical countries is that cold water is not only satiating but also refreshing. Even so, the stand of the respondent that the pictorial device or artwork on the label showing snow clad mountains mislead the consumer is stretching the argument beyond reasonable limits.

17. Even Section 2(s) of the Act which defines specification demonstrates that the description of an Article as far as practicable by reference to its nature, quality, strength, purity, composition, origin and other characteristics that distinguishes it from any other article or process also falls within the scope of the Act towards specification. Similarly Clause 7.2.3 forbids the use of the pictorial device which may create confusion in the mind of or mislead public about the origin and nature and composition is fully attracted in the present case. Thus, the

connotation of snow-capped mountain does clearly indicates that the origin of the water to be from the mountain regions which representation is indisputably not correct and would amount to conveying of a misleading impression to the buyers of the respondent's product that the respondent No. 1's product is mineral and not packaged drinking water. This assumes significance as the standards laid down for packaged drinking water are different from packaged mineral water which may be emanating from the mountains. Packaged drinking water as per IS 14543: 2004 is derived from potable water drawn from any source and it undergoes treatment whereas packaged mineral water as per IS 13428: 1998 is drawn only from mountains and hardly undergoes any treatment. Taking note of the fact that the certification available to the respondent No. 1 is of packaged drinking water which the respondent No. 1 claims to market and not packaged mineral water, the pictorial device snow-capped mountain as used by respondent No. 1 can cause confusion in the mind of the purchasing public about the source and origin of such water and can be prohibited by the appellant. The pictorial device snow-capped mountain suggests the packaged mineral water being manufactured and marketed by the respondent No. 1 has its origin in the mountains which creates a misleading impression in the mind of the general public regarding the nature, composition, purity and origin of the packaged drinking water marketed by the Appellant. In our view, the reasoning of the learned Single Judge on the misleading pictorial label has not discussed the relevant statutory provisions noted by us above and is thus unsustainable.

18. In so far as the plea of the respondent No. 1 is concerned that the suo-moto powers could not be exercised, the preamble of the Act clearly indicates that the bureau can certainly exercise powers on its own. The Bureau has been established exclusively for the harmonious development of the activities of standardization, marking and quality certification of goods and for any matters connected or incidental. Thus, it is within the ambit of the power of the Bureau to prohibit such activities which creates confusion in the mind of the public or any way misleads the public about the nature, origin, composition and properties of any good or article sought to be marketed under the BIS standard mark / label.

19. The plea of the respondent No. 1 that the registration of a trademark with the Trade Mark Registry ensures that the respondent No. 1 can use the trademark without interference from the appellant cannot also be sustained. The registration of a trademark merely guarantees rights to the registrant vis-a-vis commercial exploitation if such a mark is used wrongfully in the market by other rivals in the trade. Mere registration of the mark under the Trademarks Act cannot be construed to be a defence against any action taken under the Bureau of Indian Standards Act. If such a mark otherwise falls under the scope of other statutory enactments including the present Act and does not conform to the standards laid down under the relevant statute it can still be proceeded against under such statute notwithstanding its trademark registration.

20. In so far as the plea of the action not taken against other offending

competing manufacturers is concerned, the appellant must take such an action and we direct it to do so whenever it is warranted. However, the mere inaction against other manufacturers cannot afford a ground to the respondent No. 1 to contend that no action should be taken against it.

21. The continued objection of the Bureau pertaining to the expression Purity Guaranteed as used by the respondent No. 1 in the label of their article Aquafina is also the centre of controversy in the present appeal. The learned Single Judge has held that the use of words pure , crisp , refreshing , purified and purity guaranteed on a label pertaining to Packaged Drinking Water does not offend any provisions of law. He further held that:

...when an ordinary consumer reads the words PURITY GUARANTEED the thought which would come to his mind is that it is totally safe for human consumption and/or fully compliant with the standards set down by the Bureau. The impugned label assures the consumer nothing more than this. There is, therefore, no justification whatsoever for prohibiting the use of the words PURITY GUARANTEED . If there is any failure to comply with the standards prescribed by the Bureau or under the PFA Act, that would lead to the consequence of prosecution under the PFA Act and/ or cancellation of the licence granted by the Bureau.

One of the largest Public Sector Petroleum Undertakings is aggressively marketing its petroleum product under the slogan pure for sure . I would not be able to accept the argument that the use of these words would convey any meaning other than that the petroleum product offered for sale, if purchased and used would not be harmful in any manner to the engine, and that optimum mileage would be obtained. No infraction that Rule 37 of the Prevention of Food Adulteration Act, 1955 is manifested or has been established by the Bureau. So far as Rule 41 is concerned the subject food product, namely, packaged drinking water, is not an imitation

22. In our view also the expression PURITY GUARANTEED , only conveys to the consumers the guarantee that the quality of the product is safe for human consumption and it does not contain any harmful and undesirable substance. The expression PURITY GUARANTEED cannot be stretched by any means to convey that the water is pure H₂O, which is not even fit for human consumption for its known chemical properties. Therefore, we uphold the findings of the learned Single Judge that there is no justification whatsoever for prohibiting the use of the words PURITY GUARANTEED . The counsel for the Appellant in the present appeal also has not been able to sufficiently prove as to how the expression PURITY GUARANTEED contravenes any statutory provisions of the BIS Act and PFA Rules. Therefore, the use of the expression PURITY GUARANTEED in the label of the article Aquafina owned by the respondent No. 1 is permitted and the findings of the learned Single Judge to this extent is upheld. However, we direct the Respondent No. 1 to add to the phrase purity guaranteed as per the BIS Standards as it is the Respondent No. 1's own case that the product conforms to

the standards as per BIS specification.

23. On the basis of the above findings, we hold the following:

(a) The provisions of the BIS Act and the Specifications framed thereunder for packaged drinking water have to be construed widely so as to provide ample power to the BIS in relation to the labelling of articles which includes the mark deployed by the Respondent.

(b) Clause 7.2 of the Specifications of the Indian Standard for packaged drinking water cannot be construed as ultra-vires the Act.

(c) The Respondent No. 1 cannot escape the obligations as prescribed by the provisions of the Act and the specifications framed there under, as the Respondent No. 1 hold a valid BIS licence No. CM/L-9372890 for packaged drinking water under IS 14543: 2004

(d) When the Central Government has power u/s 24 of the Act to give directions on questions of policy, then the statutory enactments such as the PFA certainly have to be construed as a mandate of the Central Government.

(e) It is within the ambit of the power of the Bureau to prohibit such activities which creates confusion in the mind of the public or any way misleads the public about the nature, origin, composition and properties of any good or article sought to be marketed under the BIS standard mark.

(f) The pictorial device snow-capped mountain suggests the packaged mineral water being manufactured and marketed by the respondent No. 1 has its origin in the mountains which creates a misleading impression in the mind of the purchasing public.

(g) The nature of the expression PURITY GUARANTEED does not contravene any provision of BIS Act or PFA Rules and can be used subject to addition of the phrase as per BIS standards.

24. In light of the above conclusions we partly allow the appeal and direct the respondent No. 1 to remove the pictorial device snow-capped mountains from the label of the article Aquafina within six months from today and also add the phrase as per BIS standards to its label after the phrase purity guaranteed . We also direct the appellant to take appropriate action against other offending competing manufacturers if any statutory provision under the relevant Acts and the specifications thereunder is violated under which Bureau of Indian Standards has been conferred power and jurisdiction.