

(1989) 04 CAL CK 0003

In the Calcutta High Court

Case No : C.R. No. 11910 (W) of 1988 & C.R. No. 11916 (W) of 1988

Consumer Unity and Trust Society

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Consumer Protection Act, 1986 — Section 6(b)

Monopolies and Restrictive Trade Practices Act, 1969 — Section 2(2), 36A

Prevention of Food Adulteration Act, 1954 — Section 7

Citation : (1989) 2 CALLT 179

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Pradip Singh Mehta in person, for the Appellant; Samarendra Nath Banerjee and Mr. Sadananda Ganguly, for Union of India, Respondent Nos. 1, 2 and 4 and Mr. Dipankar Gupta, Anindya Mitra, Mrs. Ruma Paul and Mr. J.M. Jhunjhunwalla for Parle Beverage Pvt. Ltd., Respondent No. 12, for the Respondent

Judgement

P.K. Mukherjee, J.—The present writ petition was moved before me on September 5, 1988 challenging, inter alia, and praying for a writ in the nature of Mandamus, commanding the respondent-authorities, to act in accordance with the provisions of Essential Commodities Act 1955, Food Products Order 1955 and the Prevention of Food Adulteration Act 1954 and to confiscate the article under the name "Frooti" and "Appy" under the aforesaid Acts of 1955 and the Act of 1954.

2. This Court, upon hearing Mr. Pradip Singh Mehta, who appeared in person, had issued the Rule in terms of prayers (a), (b), (c) and (d) of the writ petition on September 5, 1988 and directed the writ petitioner to serve copies of the writ petition to respondent Nos. 4, 5 and 6 and further ordered that the prayer for an appropriate interim order would be considered on September 12, 1988 only after hearing the respondents, in particular the respondent No. 12, i.e., Parle Beverages Private Ltd. (Agro Division), hereinafter referred to as respondent

Company.

3. On the said date, this Court granted leave to the writ petitioner to add the Director, Central Food Laboratory, 3 Kyd Street, Calcutta as a party, respondent Nos. 13 in the instant writ petition.

4. On September 12, 1988 this Court upon hearing the petitioner in person and Mr. Somnath Chatterjee for the respondent Company did not grant any interim order and on September 19, 1988 this Court directed the Director, Central Food Laboratory, 3 Kyd Street, Calcutta-16 "to analyse" the samples of the product known as "Frooti" and "Appy" subject to payment of fees of Rs. 40, which was directed to be paid by the petitioner, in terms of sub-clause 6 of Rule 4 of the P.P.O. Rules, 1955.

5. As no reports could be available on September 19, 1988 this Court granted limited injunction and thereby restrained the respondents from making any advertisement through "mass media" which was however stayed in appeal preferred by the respondent Company.

5a. The writ petition came up for final hearing before me on September 26 and November 28, 1988 respectively and judgment was reserved.

6. Mr. Pradip Singh Mehta appearing in person, to establish locus standi of the petitioner, submitted that the main aim and object of the petitioner society in the field of consumer action and referred to several legal actions on behalf of the helpless victims of apathetic business houses and State agencies both before this Court and the High Court at Jaipur and before the Monopolies and Restrictive Trade Practice Commissioner at New Delhi and acclaimed that the writ petitioner had locus standi to move the present writ petition.

7. He submitted that the petitioner society was recognised by the Department of Company Affairs, Government of India as "Recognised Consumer's Association" under the MRTP Act, 1969. It was also claimed by the petitioner that it was a member of the Central Consumer Protection Council, Government of India.

8. It is the case off the writ petitioner that the respondent Company is manufacturing and marketing fruit drinks in packs under the brand names (1) Frooti (Mange drink) and (2) Appy (Apple drink under licence No. F.P.O. 6990-R granted by the respondent No. 1 in, tetra packs, granted to the respondent Company through licensees all over the country, under different Food Products Licence Nos. granted by the Licensing Authority being the respondent No. 4, under the provisions of the Food Products Order, 1955 enacted under Essential Commodities Act, 1955.

9. It is the further case of the writ petitioner that the respondent company has been permitting the sale of their products directly and indirectly, namely, "Frooti" and "Appy" by publishing through printed electronic media hoardings, namely, Boards and wall painting at shops including T.V., newspapers and delivery vans of the company as fruit drinks depicting the picture of mango and apples on their

packs as well as in the advertisement one of which appeared in the magazine "BOMBAY" of April 22 and May 6, 1986. According to the petitioner, the packs of Frooti and Appy did not contain the full details and the actual percentage of the ingredients of the contents of the said fruit drinks, as required under the Essential Commodities Act as well as Prevention of Food Adulteration Act, 1954.

10. Mr. Mehta also drew my attention to clause 11(1) of the Foods Products Order, 1955, which runs as follows:

11(1) - Any beverage, which does not contain at least 25 per cent of fruit juice in its composition shall not be described as a fruit syrup, fruit juice, squash or cordial or crush shall be described as a synthetic syrup.

11. Thus, according to the writ petitioner, the Tetra pack of Frooti and Appy nowhere displays that the drinks contained in the pack are "Synthetic Syrup". The Tetra pack contains a written message which is as follows:

Ingredients: Water, mango pulp, sugar, citric acid and Vitamin C. Contains permitted colours and added flavours" as regards the pack of Frooti is concerned.

Ingredients: Water, sugar, apple juice (Concentrated) citric acid and Vitamin C, Contains permitted colours and added flavours" - as regards the pack of Appy is concerned. From the above it is crystal clear that there is no fruit juice so far as "FROOTI" is concerned and apple juice (concentrated) so far as Appy is concerned. In any event, both the products do not conform to the standards prescribed under the Fruit Products Order, 1955 and the said Act of 1954. The provision of Clause 11(2) of Fruit Products Order, 1955 are as follows:

Synthetic vinegars, beverages, syrups, sharbats and other products associated with fruits and vegetables shall be clearly and conspicuously marked on the label as the word "SYNTHETIC" wherever used, shall be as bold and in the same size and colour of the letters are used for the name of product and shall immediately precede such name. No container containing any such product shall have anything printed or labeled on it which may lead the consumer into believing that it is a fruit product. Neither shall the word "fruit" be used in describing such a product nor shall it be sold under the cover of a label, which carries the picture of any fruit.

12. According to the writ petitioner, the respondent company has deliberately and willfully not printed the word "SYNTHETIC" on the said packs of "Frooti" and "Appy", as required under the provisions of Clause 11(2) of the said Order.

13. It is also contended by the petitioner that assuming that the composition of fruit juice also contains water and sugar in its natural form, the petitioner society wrote to the respondent company at Bombay on or around 8th August, 1988, stating, inter alia, that some consumers felt that fruit drinks manufactured by them did not contain substantial amount of fruit content and therefore it should be described as "Synthetic Beverage" as to the percentage contents of mango pulp, in Frooti and apple pulp, in Appy.

14. The respondent company, however, replied, vide their letter, dated August 16, 1988 stating, inter alia, that for any drink it must contain a minimum of 10% juice and as far as Frooti and Appy are concerned, both of them contain substantially higher contents" of fruit juice than what is required under the Food Products Rules.

15. According to the petitioner, by the information furnished in their letter, dated August 16, 1988 the respondent company sought to mislead the petitioner society which being an official member of the Central Consumer Protection Council is bound to promote and protect the rights of the consumers provided in the Consumer Protection Act 1986 which in this instance is the "Right to be Informed" u/s 6(b) of the said Act and set out hereunder:

The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practice.

16. The writ petitioner further wrote to Superintendence Company of India Ltd. for obtaining certificate regarding the samples of Frooti and Appy and obtained the necessary certificate on July 9, 1988 and August 30, 1988 as set out in Annexure "G" to the writ petition at pages 43 and 44.

17. It is further alleged that the respondent company has all along been advertising and promoting their drinks through the printed and electronic media as "fruit drinks" which are natural and fresh and enticing consumers, particularly vulnerable children, to consume their products as substitute for natural fruit juices, while in fact manufacturing and selling "synthetic drinks" or just artificially flavored, coloured sweetened water and not defining it so, thereby causing tremendous harm and loss to the consumers. It is further alleged that through misleading high profile publicity the respondent company has also been indulging in an unfair trade practice, as defined u/s 36A of the Monopolies and Restrictive Trade Practices Act, 1969 which runs as follows:

36A. Definition of unfair trade practice.

In this part, unless the context, otherwise requires, "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, was or supply of any goods or for the provisions of any services, adopts one more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether eliminating or restricting competition or otherwise, namely: (1) The practice of making any statement, whether orally or in writing or by visible representation which:

(i) "Falsely represents - that the goods are of a particular standard, quality, grade, competition type or mode";

(4) "Permits the sale or supply of goods intended to be used or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing

or packing as are necessary to prevent or reduce the risk of injury to the person using the goods".

17a. According to the petitioner, in any event, quality and purity of the product manufactured, marketed and sold by the respondent company are far below the prescribed standard and, as such, the respondent company is not entitled to manufacture or sell the same, as the same falls within the mischief u/s 2(2) (ix) of the order which runs as follows:

"misbranded" - an article of food shall be deemed to be misbranded

(a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is said, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;

(e) if false claims are made for it upon the label or otherwise;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its content;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or product of the article;

(i) if it purports to be, or is represented as being, for special dietary users, unless label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such users;

(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact or in contravention of the requirements of this Act or rules made thereunder;

(k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder.

18. The provisions of the Prevention of Food Adulteration Act, 1954 prohibit

manufacture, sale, store or distribution of adulterated food and misbranded food. Section 7 of the said Act reads as follows:

Prohibition of manufacture, sale, etc., of certain articles of food: No person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute -

(i) any adulterated food

(ii) any misbranded food;

(iii) any article of food for the sale of which licence is prescribed, except in accordance with the condition of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder, or

(vi) any adulterant.

19. During the hearing of the writ petition, this Court having directed the Director of Central Food Laboratory to give an analysis report of "Frooti" and "Appy", whereupon a report was submitted by Sm. G. Biswas, Director, dated 7th October, 1988.

20. Analysis reports of "Frooti" and "Appy" are as follows:

Frooti

Physical examination = Orange coloured liquid. Manufactured on 21 June, 88. Printed label on the paper container does not contain the quantity of Vit. C as per rule 33-A.

Total solids = 15.3%

Total soluble solids = 15.0%.

Vitamin "C" Content = 4.5 mg/100 gms of sample.

Formol Number = 1.8%.

Albuminoid ammoniacal nitrogen = 80 ppm (w/w).

Added colouring matter = Sunset yellow, a permitted coal-tar dye present; quantity being 0.015 gm/kg.

Opinion: Sample of "Frooti" (Mango Drink) contains fruit juice but it is misbranded as it contravenes rule 32-A and rule 40(3).

Appy

Physical examination = Golden yellow coloured liquid manufactured on 19th May,

1988. Printed label on the paper container does not contain the quantity of Vitamin C as per rule 32-A.

Total solids = 13.95%.

Total Soluble solids = 13.91%.

Vitamin "C" Content 13.6 mg/100 gms of sample.

Formol Number = 30 ppm (W/W).

Added colouring matter = Absent.

Opinion: Sample of "Appy" (Apple Drink) contains fruit juice but it is misbranded as it contravenes rule 37, rule 32-A and rule 40(3) of the P.F.A. Rules.

21. According to the petitioner, the so called fruit drinks being promoted and sold in the market are misleading as all show that only natural fruits are contained and do not unambiguously declare that it is diluted motion which is made with more than puffing lines: Fresh N" Juicy/ITS" LIKE BITING AN APPLE/AN APPY A DAY... PARLES" by calling their drinks as JUICY mislead the consumers into believing it is a Fruit Juice therefore coming under Rule 11(1) unambiguously.

22. On receiving a complaint regarding the genuineness of the drinks in May 1988, the petitioner approached the Calcutta Municipal Corporation but could not get any reply. According to the petitioner, Parles" FROOTI MANGO, Volfruits" Apple and Treetop Guava are tested at the Government approved laboratory of Superintendence Company of India Private Ltd., which has been referred to hereinabove. It shows that while Frooti has a pulp or concentrate content of only 2.53% the products of Volfruit Treetop has more than 7%, nearly three times more than that of Frooti.

23. In such circumstances, the petitioner had to write on or about August 8, 1988 to the respondent company whereby the petitioner informed that the fruit drinks manufactured by the respondent company did not contain a substantial amount of fruit and therefore it should be described as "synthetic beverage" and requested the respondent company to inform as to the percentage contents of "mango pulp" in Frooti and "apple pulp" in Appy.

24. In reply to the said letter, the respondent company replied as follows:

While we do not know exactly what is meant by substantial amount of fruit content, we can only state that as per FPO regulations, who are also our licensing authorities, for any drink to be called a fruit drink it must contain a minimum of 10% juice. If it is less than 10% then it is called a synthetic beverage. As far as Frooti and Appy are concerned, both of them contain substantially higher quantities of fruit juice than what is required under the FPO rules. We hope this will clarify any doubts that any of your consumers may have about the fruit content.

25. Mr. Samarendra Nath Banerjee, learned Advocate who is appearing for Union

of India, has placed reliance on an affidavit-in-opposition alarmed by Sri Omprakash Gora, on behalf of the Union of India, respondent Nos. 1, 2 and 4 wherein the said respondent prayed for condonation of delay and acceptance of the affidavit at a belated stage by this Court.

26. In dealing with the material allegations in the instant writ petition, the said deponent stated as follows:

It is true that M/s. Parle Beverages (P) Ltd. (Agro Division) Bombay has been granted Relabeller Licence Na. 6990 R under the Fruit Products Order 1955 issued under Essential Commodities Act, 1955. This licence has authorised them to relabel fruit products manufactured by bona fide Fruit Products Order Licences. The licence has been issued under the provisions of Fruit Products Order 1955 and Food Products Order, as stated in the writ petition.

27. The deponent further observed that it was the obligation of the respondents to disclose the fact that the grant of licence without subsequent approval of the labels did not permit the party to produce without such approval. The Government on receipt of the letter, dated September 5, 1988 from the petitioner society stated that the respondent company was marketing "Frooti" and "Appy" with Fruit Products Order Licence No. 6990-F in Tetra Pack and on checking records the respondent No. 4 was able find that the label with Fruit Products Order No. 6990-F was received by the Licensing Office only on September 27, 1988; i.e., after the moving of the instant writ petition for approval of the same.

28. The said deponent dealing with the allegations made in paragraph 2 of the writ petition has stated that the question of Clause 11(1) of the Fruit Products Order 1955 was not correct, because the word is not "if" "but which" conforming with the provisions of law.

29. In dealing with paragraph 9 of the writ petition, the deponent has stated that "Frooti" Mango Drinks and "Appy" Apple Drinks are ready to serve Fruit Beverage including Aerated Water containing fruit juice and pulp as laid down in Part II of the second schedule of Fruit Products Order 1955. A xerox copy has been annexed as Annexure "A".

30. In the said affidavit, the deponent has asserted that the authorities were very much vigilant to exercise the powers vested under the law and the same would be evident from the steps taken by the answering respondent against the respondent No. 12 for using labels for the sale of Frooti and Appy without approval of the Competent Authority.

31. Mr. Dipankar Prosad Gupta, appearing for the respondent company has placed reliance on the affidavit filed on behalf of the respondent company by Sri Bhupendra Parmanand Asher describing himself as the Taxation Manager and Constituted Attorney and also the Principal Officer of the company, has stated that the writ petitioner has misstated and suppressed the material facts before

this Court which have been set out in the said affidavit.

32. It is also alleged that the writ petition has been filed with an ulterior motive and on an extraneous consideration only to harass the respondent No. 12. The said deponent has raised a jurisdictional point stating, inter alia, that the respondent No. 12 has no office whatsoever in West Bengal leave alone Calcutta. The writ petitioner's Head Office is at Jaipur. The marketing of the products of the respondent No. 12 in West Bengal should not be permitted to be so.

33. It is also alleged that the present writ petition was moved at the behest of rivals and/or trade competitors of the respondent No. 12 to damage the goodwill, reputation and market to obstruct any expansions. The deponent has further asserted that there are several fruit drinks being manufactured and marketed in packs similar to that of the respondent No. 12. The respondent No. 12's fruit drinks have a much higher fruit pulp percentage than other fruit drinks. Similarly the writ petitioner has asked for no relief against any other fruit drink manufacturer in the market.

34. Thereafter, the said deponent has stated the following facts for consideration of this Court:

(i) As stated above, the said fruit drinks have been manufactured and marketed since 1985/86.

(ii) The respondent company duly obtained all the necessary licences for manufacturing and marketing the said fruit drinks under the Fruit Products Order 1955 (hereinafter referred to as "the said Order"). The said licences have been renewed from time to time by the licensing authorities under the said Order after being satisfied that the respondent No. 12 has not violated any of the provisions of the licences or the said order.

(iii) The said fruit drinks are not fruit syrups but ready to serve fruit drinks and a remarketed as such. The said fruit drinks are not "synthetic beverages" within the meaning of clause 2(k) of the Fruit Products Order, 1955. The said fruit drinks are prepared with fruit pulp and clarified sugar syrup prepared in treated water with permitted fruit colours. In this connection, the deponent craves leave to refer to an affidavit of Dr. Goal Krishna Balchandra Nadkarni, a reputed Food Technologist, a copy whereof is annexed and marked "A" subsequent to the affirmation of the said affidavit, the fruit guise content of "Appy" has been further increased.

(iv) In compliance with Clause 8 of the said order, the respondent No. 22 duly submitted the labels under which the said fruit drinks are packed and marketed to the Licensing Authority who has duly approved the same. Copies of the said approved labels are annexed and marked "B",

(v) From time to time, the samples of "Frooti" have been drawn by Food Inspectors under the Prevention of Food Adulteration Act, 1954. Copies of the said sample Notices issued by the Food Inspectors at different places are

annexed herewith and collectively marked "C".

(vi) At no stage, have the Food & Drug Administration Authorities ever raised any objection or complaint in respect of the respondent No. 12's products. The said product, therefore, fully satisfy the standards and requirements of the Prevention of Food Adulteration Act, 1954 and Rules framed thereunder. In fact, by a letter, dated 24th July, 1986, 20th August, 1986 in Marathi and an unofficial translation thereof are annexed hereto and marked "D" and "DI" respectively.

(vii) Food drinks cannot be tested for their fruit content except at the point of manufacture. Every fruit contents pulp, sugar, and water in varying percentages. Again every species of every varies in its pulp, sugar, and water content after the manufacturing process it is virtually impossible to differentiate between the added sugar and water and the original fruit and water as contained in the fruit itself. As such the report allegedly obtained by the writ petitioner from Messrs Superintendence of India Pvt. Ltd. is wholly wrong. In the circumstances, by a letter, 16th September 1988, the respondent No. 12 sent the reports of Messrs. Superintendence India Pvt. Ltd. as annexed to the petition to the Central Food Technological Research Institute, Mysore and asked for clarification of their accuracy. The said Central Food Technological Research Institute, Mysore is a Government Undertaking. Samples of the said products "Frooti" and "Appy" were also submitted to the said Institute. By their letter, dated 16th September 1988 the said Institute observed that there might be a typographical error in the said reports and that the authors of the reports must have meant solids derived from pulp or concentrate if the fruit product is analysed. The said Institute opines that probably one would have to multiply by a factor of 5 to 6 to arrive at the actual concentration of the pulp or concentrate in the final product. It was further stated therein that it is absolutely necessary to observe the operations at the time of manufacture so that the quantity of pulp/guise used and the syrup mixed with the guise for making the final beverage could be ascertained.

35. Mr. Gupta further has drawn my attention from the said affidavit where the deponent submitted that the products in question were totally harmless and not injuries to the consuming public. The products in question have been manufactured in accordance with all statutory Rules and Regulations and the products are monitored by the concerned authorities. It was further asserted in paragraph 6 of the affidavit that the questions relating to the interpretation of the said order affected all fruit drinks manufactured and inasmuch as all the other fruit drinks in the market had a lower beverage of fruit pulp than the respondent No. 12's fruit drinks, all other major manufacturers of fruit drinks in India whose names are listed in a schedule annexed herewith and marked "F" should be added as parties to this proceedings. Name of the manufacturing and that of the product RIC:

Name of the Company

Names of the product

1. Messrs. Liptons India Ltd.

"Tree Top"

2. Messrs. Voltas Ltd.

"Volfruit"

3. Messrs. Karnataka Agro

"Gala"

4. Messrs. Gujarat Agro

"Give"

36. Mr. Gupta also placed reliance on another affidavit affirmed on behalf of the respondent No. 12 after filing of the report by the Central Laboratory on 5th December 1988 which was filed in Court on December 7, 1988 and the deponent dealing with the report submitted by the Central Food Laboratory, Kyd Street, Calcutta pursuant to the order of this Court in September, 1988 the deponent on behalf of the company has asserted that the said Laboratory had no jurisdiction or authority to append its opinion that Appy and Frooti were allegedly "misbranded".

37. The deponent has further stated that the said Laboratory was only required to analyse the composition of the two products and not to opine upon branding of the same under the provisions of the Food Adulteration Rules and the said Laboratory was not competent to give any opinion upon the branding or misbranding of any product and the opinion appended was extraneous and arbitrary.

38. By referring to the report, the deponent contends that the sample of "Appy" contains 13.9% of total soluble solids and the sample of "Frooti" contains 15% of total soluble solids. The test reports also state that the products contain fruit juice. Accordingly, the total soluble solids in the said samples are such more than the minimum requirement of 10% and therefore it is clear that the said products fulfil the requirements of Fruit Products Order 1955. By referring to the report relating to "Appy", it is contended that it contains fruit juice but is "misbranded", as it contravenes Rules 37, 32A and Rule 40(3) of the F.P.A. Rules. According to the deponent, neither of the Rules are applicable to the products marketed by the respondent No. 12. Rule 32A refers to nutritional foods and provides that the food claimed to be enriched with nutrients, such as, minerals, proteins or vitamins shall have the quantities of such added nutrients on the label.

38a. According to the deponent, this rule does not apply to Frooti and Appy, as the respondent No. 12 does not claim the same to be "enriched" with any of the nutrients stated therein. Similarly, Rule 40(3) of the Prevention of Food Adulteration Rules provides that any fruit and vegetable product alleged to be fortified with Vitamin "C" shall contain not less than 40 mgm of ascorbic acid per

100 gm. of the product. The respondent No. 12 does not claim that Frooti and Appy are fortified with Vitamin "C" and hence Rule 40(3) is also not attracted to the said products. Rule 37 provides that a label should not contain any false or misleading statements 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. The labels of Frooti and Appy do not contain any false or misleading statements and, therefore, Rule 37 is also inapplicable to the said products.

39. At the hearing of the writ petition, Mr. Dipankar Prasad Gupta, appearing for the respondent company has drawn my attention to the provisions of Clause 13 of the Fruit Products Order, 1955, where the licensing officer or any officer authorised by him, in the said behalf, was vested with power for securing compliance with the said order, viz., Fruit Products Order.

40. In clause 13 the following powers are given to the "Licensing Officer" or any other officer authorised by him, which are as follows:

13. The Licensing Officer or any officer authorised by him in this behalf may with a view to securing a compliance with this Order -

(a) require any person to give any information in his possession with respect to the manufacture and disposal of any fruit products manufactured by him;

(b) enter upon and inspect the premises of any licensee or manufacturer at any time with a view to satisfying himself that the requirements of this order are being complied with, and -

(i) on giving a proper receipt, seize or detain any fruit products manufactured, marked, packed or labelled otherwise than in accordance with the provisions of this order or suspected to be manufactured, marked, packed or labelled in contravention of the provisions of this Order;

(ii) seize or detain, on giving a proper receipt, raw materials, documents, account books or other relevant evidence of which he has reason to believe that a contravention of the Order has taken place;

(iii) dispose of all fruit products of raw materials, so seized or detained in such manner as he deems fit;

(c) inspect any books or other documents of a licensee relating to the manufacture and disposal of fruit products;

(d) collect, on payment, samples of fruit products intended or exposed for sale, or sold, or under dispatch or delivery to any dealer, agent or broker for the purpose of sale, and have such samples analysed at a laboratory selected for the purpose by the licensing officer;

(e) collect, from the licensee or manufacturer, free of charge, on giving a proper receipt, samples of any fruit products or any chemical, dye or any other

ingredients used in the preparation of such fruit products from the premises of such licensee or manufacturer, in respect of which he has reason to believe that a contravention of the Order has taken place;

(f) by an order in writing prohibit the sale or manufacture of any fruit products in respect of which he has reason to believe that a contravention of this Order has taken place, at the dealers as well as at the manufacturers end.

41. Thus it appears from the aforesaid sub-clause of Clause 13 that the licensing officer has been vested with all powers including the power to prohibit the product in respect of which he has reason to believe that a contravention of this Order has taken place.

42. In my opinion, in view of the report submitted by the Director of Central Food Laboratory, Kyd Street, Calcutta regarding analysis report of the sample of "Frooti" and "Appy" submitted by the Director of the said Laboratory on October 7, 1988 and in view of the clear statements made in the affidavit affirmed by the Union of India, this Court is prima facie satisfied that the composition of the product known as "Frooti" and "Appy" requires further investigation by the "licensing authority" in terms of clause 13 of the Fruit Products Control order, 1955.

43. Accordingly, I direct that the licensing officer to arrive at a necessary decision after taking such evidence including the analysis report of the Central Food Laboratory and to arrive at the requisite finding about contents of fruit and pulp in the said "fruit drinks" as to whether the said products, viz., "Frooti" and "Appy" are "misbranded" and, in fact, the respondent company is cheating the consumers at large.

44. The Licensing Officer should also arrive at a finding as to whether a required percentage of fruit juice is present or not in the said concerned products within the meaning of Clause 2(k) of the Order or actually what has been declared on the label of the pack and/or if necessary, pass order in terms of Clause 13(f) of the Fruit Products Order prohibiting the sale or manufacture of the said product, viz., "Frooti" and "Appy".

45. If, according to the licensing officer, the products are "misbranded" under P.F.A. Rules, then to take such decision for punishment against the Company for adulteration under the relevant provisions of the Act and/or Order.

46. Pending final decision by the Licensing Officer, the respondent company is restrained from making any publicity of the product in the newspapers, mass media, including Television, in respect of the product but the respondent company will be at liberty to produce and sell the aforesaid product, i.e., "Frooti" and "Appy" in the meantime.

47. The Licensing Officer is to conduct the proceeding after giving a reasonable opportunity to the writ petitioner who is appearing in person as well as the respondent No. 12 within a period of four months from the date of

communication of this order and in accordance with law.

48. The writ petition is thus disposed of. There will be no order as costs.

49. Prayer for stay of operation of this judgment is considered and refused by this Court, since this Court has not restrained the respondent No. 12 from manufacturing the concern food products.

50. If the certified copy of this judgment is applied for by the parties, the same may be made available to them expeditiously in terms of the Rules.

51. In the meantime, let plain copies of the operative part of the judgment from page 25, countersigned by the Assistant Registrar (Court) be given to the parties for communication and for compliance.