

(2016) 08 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition No. 13060 of 2013 (GM-RES)

Danone Narang Beverages Private Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Legal Metrology Act, 2009 — Section 15(l)(b), 18, 36, 36(1)

Legal Metrology (Packaged Commodities) Rules, 2011 — Rule 2(h), 4, 6, 6(e), 6(3), 6(l)(e), 8, 8(1), 8(2)

Citation : (2016) ILRKarnataka 4764 : (2017) 1 KantLJ 546 : (2016) 4 KCCR 3492

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Pradeep Nayak and Shri Arun Sri Kumar, Advocates, for the Petitioner; Served, for the Respondents No. 2; Smt. R. Anitha, Government Pleader, for the Respondents No. 1

Final Decision : Allowed

Judgement

Anand Byrareddy, J. - Heard the learned Counsel for the petitioner and the learned Government Advocate.

2. The brief facts of the case are as follows:

The petitioner is said to be a private limited company engaged in the manufacture and distribution of packaged natural mineral water under the brand name of "Qua". It is claimed that the bottles distributed by the petitioner have labels affixed on the bottle, containing all the pre-printed information required to be provided, which is common to every bottle upon which such label is affixed, including the address of the manufacturer, nutritional information, volume of the liquid contained, etc. However, it is stated, that since the production batch numbers, date of manufacture and the retail price, which vary from one batch of the bottles to the next, or from time to time, is said to be directly printed on the bottle while on the manufacturing line. This is known as "online printing" and is

said to be a common practise followed by most reputed manufacturers of bottled water. Hence it is contended that the petitioner had conformed and complied with Section 18 of the Legal Metrology Act, 2009 (Hereinafter referred to as the "LM Act", for brevity) read with Rules 2(h) and 8 of the Legal Metrology (Packaged Commodities) Rules, 2011 (Hereinafter referred to as the "LMPC Rules", for brevity).

It transpires, the Inspector, Legal Metrology, Respondent No.1 had, in exercise of powers under Section 15(l)(b) of the LM Act had passed an Order dated 17.5.2012, to the effect that:

- a. the Stock consisting of 65907 bottles of Qua Natural Mineral Water be seized and sealed; and
- b. the said seized stock shall remain in the custody of the petitioner and respondent No.2, after obtaining an undertaking that the Goods would not be sold or otherwise disposed of.

The above said order was said to be on the basis that the maximum retail price (MRP) was declared on the neck of the bottle instead of setting it out on the label of the bottle. Respondent No.1 is also said to have filed a complaint before the Court of the Metropolitan Magistrate, Traffic Court-1, Bangalore, alleging that the labels affixed on the bottles do not declare the sale price of the bottles and that therefore an offence has been committed by the petitioner. It is stated that respondent No. 1 had suppressed the fact that the price was, in fact, legibly printed directly on the bottle.

The petitioner is said to have written a letter to respondent No.1 pointing out that there was no violation of the provisions of law as alleged, by a letter dated 23.5.2012.

Respondent No. 1 is said to have replied, insisting that when a label is affixed to a package, all information must be provided on the label and that printing on line was not contemplated under the LMPC Rules

It then transpires, that the Indian Beverage Association is said to have made a representation on 20.6.2012, to the Director, Legal Metrology, Department of Consumer Affairs, New Delhi, seeking a clarification with respect to the display of the MRP on the neck or crown of the packaged drinking water. While bringing to his attention that the MRP is displayed by means of ink-jet coding machines installed at the plants.

And that under Rule 8 of the LMPC Rules, the declarations such as the MRP, date of manufacture, etc. are required to be displayed on the principal display panel (PDP). And that Rule 2(h) defines that the PDP consists of the label of the bottle as well as the declarations made on the bottle itself.

Further, that Rule 4 of the Rules provides that declarations have to be on the package or on the label affixed thereto.

The Director, Legal Metrology, is said to have replied stating that:

"pre-printed information could be grouped together and given in one place and the online information grouped together in other place is allowed under Rule 2(h) of the Legal Metrology (Packaged Commodities) Rules, 2011 ("LMPC Rules"), which also allows the online declaration of MRP on the crown/neck of bottles containing packaged drinking water."

Thus, the petitioner's stand was vindicated. Armed with the above said clarification, the petitioner is said to have approached the Controller for the release of the goods as they carried an expiry date and subject to decay and would be rendered useless. It appears that there was a belated reply intimating the petitioner that the matter of release of the goods would be placed before the Court of the Magistrate, in the pending criminal case. It is only then that the petitioner had learnt of the criminal case having been registered and numbered as CC 829/2012, alleging an offence punishable under Section 36 of the LM Act.

The petitioner is said to have made an application seeking release of the goods before the Magistrate;. It is said that the application was rejected on several technicalities, without addressing the case on merits.

3. It is contended that the complaint made against the Managing Director of the petitioner - company is misconceived as the petitioner - company has never had a Managing Director. There is no vicarious liability that can be attributed to any officer of the company and on that ground alone, the complaint must fail. Significantly, the company itself is not named as one of the accused, this is yet another ground on which the complaint would fail.

It is emphasized that Rule 8(1) of the LMPC Rules specifically provide that every declaration required to be made under the Rules shall appear on the Principal Display Panel. The Principal Display panel is defined under Rule 2(h) as the total surface area of the package where the information required under the Rules are to be given. Rule 2(h) also specifically provides that all the pre-printed information could be grouped together and given at one place and the on-line information grouped together in other place. Even Rule 6 specifically states that the package shall bear declarations either on the package itself or on a label securely affixed to the package.

It is pointed out that the practise of on-line printing of the retail price on the bottle directly is common practise, and there are many other manufacturers and distributors who follow the same process through out the country, including Bangalore. However, it is only the petitioner who has been singled out in the complaint alleging violation of the Act and Rules.

It is contended that even assuming that the seizure of the goods was made under a bona fide mistake, at least when the concerned officer was informed of the opinion given by the Director of Legal Metrology, he ought to have released the goods. The officer not only having failed to release the goods, had also

resisted the application filed by the petitioner before the Court of Magistrate, for the release of the goods and hence it is claimed that the petitioner ought to be compensated for the loss suffered in the goods now having spent their shelf life as the goods are well past their expiry date.

4. The State has resisted the petition and it is contended by the learned Government Advocate, on behalf of the State, that it was a fact that as on 17.5.2012, the Inspector, along with the Assistant Controller of Legal Metrology, had visited the premises of the second respondent and in the course of inspection had seized goods belonging to the petitioner. As the same were not in compliance with Section 18 of the LM Act and Rules 4, 6(I)(e) & 6(3) of the LMPC Rules. And that the same was an offence punishable under Section 36(1) of the LM Act.

It is contended that under the Rules, if a label is affixed for declarations, all information under Rule 6(1) ought to be declared on the label itself. The petitioner had failed to indicate the retail sale price of the package on the label, thus violating Rule 6(e) and 6 (3) of the LMPC Rules.

It is contended that Rule 8(1) and Rule 2(h) of the LMPC Rules would not apply to the packages in question, since the label is affixed on the packages. It is Rules 4 and 6 (1) that would apply .

It is contended that it is only for bottles containing soft drinks, beverages and the like, which are returnable by the consumer for refilling and reuse, the retail price is indicated either on the crown cap or on the bottle or on both.

5. In the light of the above rival contentions, it is to be noticed that the offence alleged to have been committed is one punishable under Section 36 of the LM Act. The said provision is extracted hereunder for ready reference.

"36. Penalty for selling, etc., of non-standard packages. - (1) whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty five thousand rupees, for the second offence, with fine which may extent to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both."

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It is the case of the first respondent that in terms of Rule 4 read with Rule 6(I)(e) of the LMPC Rules, the label affixed on the package ought to contain the retail sale price of the package, which is admittedly not forthcoming and hence the alleged violation.

It is the case of the petitioner that Rule 2(h) defines "principal display panel", which in relation to a package means, the total surface area of the package and the information required to be furnished under the Rules, could be grouped together and given in one place or the pre-printed information could be grouped together and given in one place and on-line information grouped together in another place.

And that every declaration to be made under the Rules should appear on the principal display panel, in terms of Rule 8.

Hence, it is contended that the retail sale price which is printed on the neck of the bottle, though not indicated on the label, is in consonance with the Rules and it could not be construed as a violation.

The first respondent would urge that the printing of the retail sale price on the crown or the neck of the bottle would be permissible only in respect of soft drink, ready to serve fruit beverages or the like, where the bottle is returnable by the consumer for being refilled (by the manufacturer), as provided under Rule 8(2) and not in respect of packaged water.

In so far as the above controversy is concerned, it is seen that the Indian Beverage Association, New Delhi, had made a representation to the Director, Legal Metrology, New Delhi, a copy of which is at Annexure-G to the petition, dated 20.6.2012, in the wake of many of its members, apparently including the petitioner, having received notices from the Department of Metrology, Government of Karnataka, alleging that declaration of the retail price on the crown or the neck of the bottles containing packaged drinking water, as being violative of the Rules.

The Director, Legal Metrology, has, in turn, addressed the Controller of Legal Metrology, Government of Karnataka, Bangalore and has furnished the following clarification, as per communication dated 26.7.2012, a copy of which is at Annexure - H, which reads as follows:

"WM-9(37)/2012

Government of India Ministry of Consumer Affairs,

Food & Public Distribution

Department of Consumer Affairs

Legal Metrology Division

Krishi Bhawan, New Delhi-01

Dated : 26.7.2012

To,

The Controller of Legal Metrology,

Govt, of Karnataka,
Bangalore.

Subject: Declaration of MRP on the crown / neck of bottles containing packaged drinking water

Sir,

Undersigned is to refer to the letter No.IBA/35/11-12 dated 20.6.2012 (copy enclosed) on the above mentioned subject and to state that the declaration of the pre-printed information could be grouped together and given in one place and on line information grouped together in other place is allowed under sub-rule (h) of Rule 2 of the Legal Metrology (Packaged Commodities) Rules, 2011, which also allows the online declaration of MRP on the crown / neck of bottles containing packaged drinking water.

2. It is therefore requested that necessary action may be taken according to the provisions of the Act and Rules.

Yours faithfully,

Sd/-

(B.N.Dixit)

Director, Legal Metrology

Tele No.011-23389489, 23386194"

Apart from the above clarification issued by the said Authority, it may also be noticed that Rule 4, which provides for the regulation for pre-packing and sale of commodities in packaged form - lays down that, no person shall permit any pre-packed commodity to be sold, distributed or delivered "unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under the Rules."

(emphasis supplied)

The words "or on a label" would be in consonance with Rule 2 (h).

Rule 6 is also consistent in this regard, when it lays down thus:

"6. Declarations to be made on every package. -

(1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to -

(emphasis supplied)

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any

imported package the name and address of the importer shall be mentioned on every package.

Explanation I. - If any name and address of a company is mentioned on the label without any qualifying words "manufactured by" or "packed by", it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

Explanation II. - If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III. - In respect of packages containing food articles, the provisions of this sub-rule shall not apply, and instead, the requirement of the {Foods Safety and Standards Act, 2006 (34 of 2006)} and the rules made there under shall apply.

(b) The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.

(c) The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.

(d) The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package:

Provided that for packages containing food articles, the provisions of the [Foods Safety and Standards Act, 2006 (34 of 2006)] and the rules made there under shall apply:

Provided further that nothing in this sub-clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made there under:

Provided also that for packages containing cosmetics products, the provisions of the Drugs and Cosmetics Rules, 1945 shall apply.

(e) the retail sale price of the package; "

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Rule 8(2) of the said Rules is only an enabling provision for soft drinks, ready to serve fruit beverages or the like, packed in returnable bottles. This enabling provision cannot be read as a restrictive provision, especially when Rule 8(1) allows declarations to be made on the entire principal display panel.

Even assuming that there was a violation by the petitioner company in not having printed the retail sale price on the label of the package, whether the goods could be seized in the premises of the petitioner company, would have to be answered in the negative in view of the Explanation to Rule-4, which reads as under:

"Explanation. - The existence of packages without the declaration of retail sale price within the manufacturer's premises shall not be construed as a violation of these rules and it shall be ensured that all packages leaving the premises of manufacturer for their destination shall have declaration of retail sale price on them as required in this rule."

Further, it is noticed that the allegation is against a company. A criminal complaint against an officer of the company without arraigning the company as an accused is not maintainable. (See: *Aneeta Hada v. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661).

The complaint would also have to state whether the officer of the company concerned was either in charge of or was responsible for the day to day management and conduct of business of the company. A mere statement that a person is an officer of the company, against which certain allegations are made, is insufficient to make the officer liable, in the absence of specific allegations in his role in the management of the company. (See: *Pepsico India Holdings (P) Ltd. v. Food Inspector*, (2011)1 SCC 176)

In the light of the above, the proceedings purported to have been initiated against the petitioner - company is misconceived and the consequent seizure of the goods of the petitioner is clearly illegal. The department of the first respondent not having woken up to the situation even after a clarification was issued by the Director, Legal Metrology, New Delhi, indicates a callous and cavalier attitude. Consequent upon the seizure, the entire goods having lost their shelf life is a loss directly attributable to the Legal Metrology Department.

The Court of the Magistrate having entertained the criminal proceedings in the face of the glaring circumstance that the company was not made a party to the proceeding, when the principal accused is in fact the company, rendered the proceedings bad in law.

Accordingly, the writ petition is allowed.

The impugned order at Annexure - A is set aside. The complaint and proceedings in case No.CC 829/2012, on the file of the Court of Metropolitan Magistrate, Traffic Court- I are quashed.

As the goods seized by respondent No. 1 are said to be no longer marketable, the Department of Legal Metrology is bound to compensate the petitioner - company for its loss. The petitioner company shall lodge a claim providing the particulars of the loss that has occasioned, while also taking into account any material that could be salvaged and re-used, to the Registrar (Computers), High

Court of Karnataka, Bangalore, who in turn shall issue notice to the first respondent and the Collector, Legal Metrology, Government of Karnataka, Bangalore and determine the compensation payable, adopting a summary procedure in conducting the inquiry. Such Order passed by the Registrar (Computers) shall be final.

The Department of Legal Metrology, Government of Karnataka, shall pay costs in a sum of Rs. 15,000/- to the petitioner - company.