

(1999) 07 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

D.K.PANDITA

APPELLANT

Vs

BRITANIA INDUSTRIES LIMITED

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : 2001 1 CPJ 29

Hon'ble Judges : R.K.Anand J.

Final Decision : NOE discharged

Judgement

1. A complaint has been made under Section 36A of the MRTP Act, 1969 (the Act for brief), charging the respondent with adoption of and indulgence in unfair trade practices and alleging that two packets of biscuits manufactured and marketed by the respondent under the brand name "Good Day" though purchased on 23rd May, 1997 bore the manufacturing date of 6/ 97 meaning that the biscuits were manufactured and packed in June, 1997 whereas the packets were actually purchased in May, 1997. The grievance of the complainant is that the respondent is misleading the public and selling old goods under new manufacturing dates and is falsely representing that the biscuits were manufactured in June, 1997. An application under Section 12A of the Act has also been filed for interim relief in terms of restraining the respondent from selling its products in the market.

2. A Notice of Enquiry was issued to the respondent on 13.8.1997. In reply, while denying the allegation of unfair trade practices, it has been stated on behalf of the respondent that the packaging material (wrappers) required for pre- packing of "Good Day" brand of biscuits and indicating therein 5/97, the month in which it was expected to be pre-packed had been exhausted before the close of the month of May, 1997 and packaging material (wrappers) intended to be used during the month of June, 1997 bearing 6/97 thereon had to be used for packing during the month of May, 1997. It has been further stated that this kind of use of packaging material is permissible under the provisions of Rule 6(1) Proviso (B) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. It

has been clarified that the use of pre-printed wrappers indicating June, 1997 for the production and sale of biscuits during May, 1997 is permitted under the law. It has also been stated that the present complaint is liable to be dismissed in view of Section 3 of Standards of Weights and Measures Act, 1976 according to which provisions of this Act override the provisions of any other law. On completion of the pleadings, the following issues were framed : (1) Whether the respondents are indulging in the unfair trade practices as alleged in the Notice of Enquiry ? (2) Whether the said unfair trade practices are not prejudicial to the public interest ?

The complainant did not file any affidavit of evidence stating that the facts given in the complaint had been admitted by the respondent in its reply. The respondent on the other hand, instead of filing its affidavits by way of evidence and documents, made an application under Regulation 65(1)(j) of the MRTPC Regulations, 1991 seeking closure of the enquiry and discharge of the Notice of Enquiry.

3. I have heard the Advocates for the complainant as well as respondent. The fact that the packing material (wrapper) marked 6/97 was used for packaging "Good Day" brand of biscuits sold in May, 1997 has not been denied by the respondent. The case of the respondent is that it obtains packaging material from Paper Products Ltd., Bombay and orders for the same are placed three months in advance. It has been further explained that demand for "Good Day" brand of biscuits was particularly high in the month of May, 1997 and the packaging material with PKD 5/97 endorsement was exhausted and the respondent had to use the packaging material with the endorsement PKD 6/97. It has been contended by the respondent that it is permissible under the provisions of Rule 6(1) Proviso (B) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The Rule 6(1) Proviso (B) is reproduced below : "where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre- packing the concerned commodity produced or manufactured during the next succeeding month and not thereafter, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer, as the case may be, extend the time during which such packaging material may be used, and where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for pre-packing the concerned commodity."

The above provisions thus indicate that the packaging material intended to be used during June, 1997 could be used for pre-packaging of "Good Day" brand of biscuits in the previous month i.e. May, 1997. In other words, the use of packaging material marked 6/97 for pre- packaging of biscuits in May, 1997 is permissible under the aforesaid provisions of the Standards of Weights and

Measures (Packaged Commodities) Rules, 1977. There is thus no escape from the conclusion that no case of unfair trade practices by and on behalf of the respondent is made out. Moreover, the provisions of Section 3 of the Standards of Weights and Measures Act, 1976 are clear and override the provisions of any other law including the MRTP Act, 1969. At any rate, according to Section 4 of the MRTP Act, 1969, the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. In other words, the MRTP Act is intended to supplement and not to supplant the ordinary law in force. It thus follows that the Commission is precluded from exercising its jurisdiction in the present case and, therefore, the present proceeding before the Commission is not maintainable. It can thus be concluded that as the provision of Section 3 of the Standards of Weights and Measures Act, 1976 bar the jurisdiction of the Commission, the present proceeding is not maintainable. In view of the aforesaid discussion, it is concluded that the present complaint is not maintainable and accordingly, the Notice of Enquiry deserves to be and is hereby discharged with no order as to costs on the facts and in the circumstances of the case. NOE discharged.