

(2011) 07 P&H CK 0171

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. M-40359, M-46880 of 2007, 47443-M of 2005, M-2358 of 2008, M-1545, M-1828, M-15485 and M-33453 of 2010

Hindustan Lever Limited

APPELLANT

Vs

Government Food Inspector, Hoshiarpur and another

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 12, 14, 14A, 16, 23(1A)
Prevention of Food Adulteration Rules, 1955 — Rule 32
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 10, 36, 6
Weights and Measures Act, 1976 — Section 3

Citation : (2011) 164 PLR 205

Hon'ble Judges : Vijender Singh Malik, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—These petitions have been placed before this Bench on a reference made by the learned Single Judge on 13.02.2009 expressing reservation with a view taken in Hasmukh Mewada v. State of Punjab, 2008 (3) Law Herald (P&H) 249. Learned Judge observed that the requirement to furnish complete address of the manufacturer in terms of Rule 32(c)(i) of the Prevention of Food Adulteration Rules, 1955 includes the name of the State for the benefit of common consumer and that such issue is required to be examined by larger Bench.

2. The said question has arisen in this bunch of petitions in view of complaint lodged by the Government Food Inspector under Sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 (for short the "Act") and Rule 32 of the Prevention of Food Adulteration Rules, 1955 (for short the "Rules"). The samples in all these cases have been taken after 24.08.2005 but before 09.11.2006. The issue is legal but for facility of reference, the facts from Crl. Misc. No.M-40359 of 2007 are mentioned. In the said case, three packets of Red Label Tea were opined by the Public Analyst as misbranded for the reason that the complete

address of the manufacturer i.e. name of the State has not been given. The exact opinion of the Public Analyst is as under:

That the product has not been labeled in accordance with the provisions of Rule 32 of P.F.A. Rules, 1955, as the complete address of its manufacturer (i.e. name of State) has not been given. Hence, the sample is misbranded.

3. The petitioner has sought quashing of the said complaint, inter alia, for the reason that the petitioner has disclosed the name of the manufacturer, city and the Pin code, therefore, the non-disclosure of the State is inconsequential and is not included in the expression "complete address" appearing in Rule 32(i)(c) of the Rules. Therefore, the criminal proceedings initiated against the petitioner are an abuse of process of law and cannot be permitted to continue.

4. Before the said argument is considered, the relevant portion of the statutory provisions needs to be extracted:

The Prevention of Food Adulteration Act, 1954

2. Definitions.- In this Act unless the context otherwise requires

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(ix) misbranded - an article of food shall be deemed to be misbranded -

XXX

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

7. Prohibitions 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) xxx

(ii) any misbranded food;

23. Power of the Central Government to make rules.-

1. xxx

1-A. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely

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(d) restricting the packing and labeling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article [or to preventing adulteration];

The Prevention of Food Adulteration Rules, 1955

Rule 32 (as was in existence prior to 1989) Unless otherwise provided in these rules there shall be specified on every label:

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(b) the name and business address of the manufacturer or importer or vendor or packer,

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Relevant extract of Rule 32 after amendment vide Notification No.GSR 422 (E) dated 29.04.1987 w.e.f. 29.04.1989

32. Package of food to carry a label.-

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(c) the name and complete address of the manufacture or importer or vendor or packer,

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Explanation II.- "Complete Address" means in case of a company, the address at which its registered office is situated and in any other case, the name of street, number (if any), assigned to the premises of the manufacturer or packer and either the name of the city and State where the business is carried on by manufacturer or packer or the Pin code. For the purpose of this explanation, shorter address registered under Rule 36 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, shall also be treated as complete address.

Relevant extract of Rule 32 after amendment vide Notification No.GSR 877(E) dated 20.11.2000 w.e.f. 20.11.2001

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(c)(i) the name and complete address of the manufacturer and manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit, as the case may be.

5. The Standards of Weights and Measures Act, 1976 (for short the "1976 Act") also prescribes for declaration of name and address of manufacturers on the packaging. The said Act has since been substituted by Legal Metrology Act, 2009, which has come into force on 01.04.2011. But for the purpose of present petitions, the said enactment does not affect the issue raised.

Section 3 of the 1976 Act is as under:

3. Provisions of this Act to override the provisions of any other law.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument

having effect by virtue of any enactment other than this Act.

6. Relevant Rules of the Standards of Weights and Measures Act (Packaged Commodities) Rules, 1977 (for short the "1977 Rules") are as under:

Rule 6.-

After amendment vide Notification No.GSR 246E dated 5.4.1999 w.e.f. 06.07.1999:

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

(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.

Amendment vide Notification No.GSR 666E dated 25.09.2002 w.e.f. 25.03.2003:

Provided that for package containing food articles, the provisions of Prevention of Food Adulteration Act, 1954 and the rules made thereunder shall apply.

As amended vide Notification No.GSR425(E) dated 17.07.2006 w.e.f. 13.01.2007:

6. (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.

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Explanation III.- In respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made thereunder shall apply.

Rule 10-

As amended vide Notification No.GSR 246 E dated 05.04.1999 w.e.f. 06.07.1999

10. Declaration of Name and Address of the Manufacturer, etc.- (1) Subject to the provisions of Rule 7, every package kept, offered or exposed for sale or sold shall bear conspicuously on the package, the name and complete address of the manufacturer or where the manufacturer, is not the packer, the name and address of the manufacturer and the packer

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Explanation.- "Complete Address" means in case of a company, the address at which its registered office is situated and, in any other case, the name of the street, number (if any) assigned to the premises of the manufacturer or packer and either the name of the city and State where the business is carried on by the manufacturer or packer or the Pin code.

As amended vide Notification No.GSR 425(E) dated 17.07.2006 w.e.f.

13.01.2007:

Explanation.- In this sub-rule "Complete Address" means the postal address at which its registered office of the manufacturer is situated or the factory is situated, and, in any other case, the name of the street, number (if any), assigned to the premises of the manufacturer or packer and either the name of the city and State where the business is carried on by the manufacturer or packer or the Postal Index Number Pin code so that a consumer can identify and locate the manufacturer or packer, as the case may be.

As amended vide Notification No.GSR 632(E) dated 16.09.2009 w.e.f. 01.07.2010:

Explanation.- In this sub rule, "complete address" means, the postal address at which the factory is situated, and, in any other case, the name of the street, number (if any) assigned to the premises of the manufacturer or packer and the name of the city and State where the business is carried on by the manufacturer or the packer or the Postal Index Number (PIN) Code so that the consumer can identify and locate the manufacturer or packer or importer, as the case may be.

7. Mr. Luthra, learned counsel for some of the petitioners has vehemently argued that the complete address of the manufacturer is required to be disclosed on the label with a view to prevent the public or the purchaser being deceived or misled as to character, quality or quantity of the article. The address printed on the label is sufficient to identify the manufacturer so as to verify the character, quality or quantity of the article and that mere fact that the name of the State is not printed does not in any way defeats the object of the provision to find out the whereabouts of the manufacturer. The Pin code printed is sufficient to know the location of the manufacturer including the State. It is pointed out that the Pin Codes were introduced in the Country in the year 1972 and are fairly well known to the citizens. It is also pointed out that in terms of Section 12 of the Act, the purchaser has a right to get the food article analyzed by the Public Analyst and that in terms of Section 14 of the Act, the manufacturers, distributors and dealers are to give warranty in writing about the nature of the quality of such article. Therefore, in the event of any misbranding, a purchaser can find out the detailed address of the manufacturer from the vendor, who has sold food article to the consumer. On the other hand, Section 14A of the Act enjoins an obligation to the vendor to disclose the name, address and other particulars from whom he purchased the article of food to the Food Inspector. Therefore, the address of the manufacturer, distributor or dealer can be found out from the vendor in the event of any ambiguity in the address and that any purchaser can take recourse to his remedy in respect of character, quality or quantity of an article in appropriate Forums. It is so argued while asserting that the address mentioned on the label is complete.

8. It is contended that Rule 32(c) has been amended from time to time. As per amendment effected from 29.04.1989, Explanation II clarifies that (i) the

manufacturer can disclose the address at which registered office of its company is situated and (ii) in any other case, the name of street, number (if any) assigned to the premises of the manufacturer or packer and either the name of the city and State where the business is carried on by manufacturer or packer (iii) or the Pin code. Even the shorter address registered under Rule 36 of the 1977 Rules could also be treated as complete address. Such was position till 20.11.2001. After amendment effective from 20.11.2001, the requirement is to furnish name and complete address of the manufacturer, packer or bottler. The address mentioned by the petitioner excluding the name of the State is a complete address as per the amended provisions sufficient for any member of the public or a purchaser to reach manufacturer so as to complain about the character, quality or quantity of the article.

9. Mr. Luthra has vehemently argued that Rule 32(c) has been framed in exercise of rule making power conferred on the Central Government by Section 23(1A) (d). The said provision empowers the framing of Rules in relation to the package and labeling and design thereof with a view to prevent the public or the purchaser being deceived or misled as to character, quality or quantity of the article. Therefore, the intention of the legislature to print complete disclosure of the address is to achieve the said objective i.e. purchaser should not be deceived or misled as to character, quality or quantity of the article. Such objective is achieved by the address mentioned on the label by the petitioner even by excluding the name of the State. Therefore, the article manufactured or sold by the petitioner cannot be termed to be misbranded. It is argued that such is the view taken by this Court in *Hasmukh Mewad's case* (supra) and by Calcutta High Court in *R.K. Mittal v. Dr. B.Roy Chaudhury and another*, 1985 (1) Prevention of Food Adulteration Cases 142. The Calcutta High Court has held that the address given on the crown corks is sufficient to locate the reputed concern in question and on the strength of the address given, the authorities or the persons cannot have any difficulty in locating the said concern. Therefore, it was found that no offence is made out against the petitioner therein. Learned counsel for the petitioner also relied upon a judgment of this court reported as *Mohini Tea Leaves and another v. State of Punjab and another*, 2010 (1) F.A.C. 369 in which the Court was considering the case where the address was mentioned without disclosing the Pin code and the name of the State, but the Court found that the complete address is that address, where its manufacturer and packer could be identified and located. Similar is the view in another Single Bench judgment of this Court in *Harkirat Singh and another v. State of Punjab*, 2009 (2) R.C.R. (Cri) 635, wherein it was held to the following effect:

8. The reading of Rule 10 would show that the intention of the rule making authority was that the complete address should be given so that the manufacturer and the packer can be identified and located. The rules framed under the Standard Weighment and Measurements Package Commodities Rules give an option to the manufacturer to either mention the name of the State or the PIN Code. The address given by the petitioner, includes the PIN Code and,

therefore, the Food Inspector or person authorized under the Rules have no difficulty in locating the address.

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11. The learned counsel for the State has not been able to point out that under Rule 32(c)(i) of the Act as to how the requirement of mentioning State was mandatory. The learned counsel for the State also relied on the definition of the rules under the Standard Weighment and Measurements Package Commodities Rules to contend that complete address should include State.

12. However, the reading of the rule would clearly show that the word used is or not and. Once the PIN Code is given the requirement of Standard Weighment and Measurements Package Commodities Rules stands satisfied.

10. Mr. Cheema, learned Senior Advocate appearing for some of the petitioners has pointed out that in terms of the proviso added to Rule 6 in 1977 Rules in the year 2003, the provisions of Prevention of Food Adulteration Act or the Rules, will prevail. He also referred upon the judgment of Hon''ble Supreme Court reported as Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, , wherein relying upon the Rule 32(b) as it was then in existence, it was observed that as per the Rule, particulars such as number of the premises and the locality or the area, where the premises is situated is required to be disclosed, but on account of technical breach and that the fact that there was no charge framed under Rule 32 (b), the appeal was accepted.

11. On the other hand, Mr. Sukant Gupta, learned counsel for the Chandigarh Administration has argued that the argument that the Pin Code is complete address in itself is not tenable, as such Code is primarily for the facilitation of the postal authorities for delivery of the postal articles. Such disclosure of the Pin Code does not presume knowledge of the area to all classes of the consumers and the absence of State cannot be called complete address. It is also argued that Explanation II having been omitted from Rule 32 effective from 20.11.2001, the provision for disclosing Pin Code, as the complete address has been specifically done away with. Therefore, in terms of amended Rule 32(c)(i) w.e.f. 20.11.2001, the name and complete address of the manufacturer is to be disclosed, which necessarily means the name of the State as well.

12. We have heard learned counsel for the parties. Firstly, we need to examine the relation between the two Statutes i.e. the Act and the Rules framed there under and the 1976 Act and the Rules framed there under. Section 3 of the 1976 Act gives overriding effect to the provisions of such Statute over any other law in the event of any inconsistency. Rule 6 framed under the aforesaid 1977 Rules as in force w.e.f. 06.07.1999 provides for the disclosure of name and address of the manufacturer or where manufacturer is not a packer, the name and address of the manufacturer and packer. The said part is not inconsistent with the Rules. Rule 6 has been amended w.e.f. 25.03.2003 to the effect that the provisions of Prevention of Food Adulteration Act, 1954 and the rules made there under shall

apply in respect of packages containing food articles. Rule 6 has been further amended vide notification No.GSR425(E) dated 17.07.2006 w.e.f. 13.01.2007, inserting Explanation III, which is to the effect that in respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply. Thus at any stage, there is no inconsistency in the provisions of the Act with the 1976 Act or Rules 6 so framed.

13. However, there is no clause in Rule 10, that such Rule shall not apply in relation to food article and that the provisions of the Prevention of Food Adulteration Act or the Rules made there under shall apply as provided for in Rule 6 after amendment in the year 2003 and clarified in the year 2007. There is no inconsistency in the Act and Rules with any provisions of the 1976 Act till 06.07.1999. As a matter of fact, the Explanation inserted effecting from 06.07.1999 in the 1977 Rules is *pari materia* with the Explanation II inserted in the Rules w.e.f. 29.04.1989. The provisions of the Act and the Rules framed there under are differently worded than the provisions of Rule 10 as amended vide Notification dated 17.07.2006 effective from 13.01.2007. The "complete address" as defined under Rule 10 means the Postal Address or even the Postal Index Number. Therefore, in terms of Section 3 of the 1976 Act, the provisions of Rule 10 providing for printing of Postal Address or Postal Index Number shall be deemed to be complete address for the purpose of Act or the Rules framed there under as well from 13.1.2007. However, in none of the present set of cases the said questions arises. Thus, for the period relevant in the presence cases, there is no inconsistency in the two statutes and rules framed there under.

14. Coming to the question; as to whether the name of State is bound to be disclosed so as to meet the requirement of Rule 32(c)(i), it needs to be noticed that Rule 32 has been framed with a view to prevent the public or the purchaser being deceived or misled as to character, quality or quantity of the article in terms of Section 23(1A)(d) of the Act. Though the Postal Index Number is meant to facilitate delivery of postal articles by the Postal Authorities, but the fact remains that such Postal Index Number is widely in use after the same was introduced in the year 1972. The Postal Index Number denotes not only the region, but also the State and also the postal area, where the manufacturing unit or the distributor is located. Such Postal Index Number is not an internal guideline shrouded in secrecy, but is widely publicized document propagated to be used by all users of postal articles. Therefore, the printing of Pin code is sufficient to identify the location of the manufacturer or packer, as the case may be, which specifies the purpose of Rules contemplated by a Statute. The requirement of Rule is to be examined keeping in view expectations of the reasonable average citizen. The view of this Court in *Harkirat Singh*, *Hasmukh Mewada* and *Mohini Tea Leaves* cases (*supra*), that address given by the manufacturer or the packer, which includes the Pin code and as thus, the Food Inspector or any person authorized on the Rules have no difficulty in locating the address cannot be said to be against the objective and purpose of the Rules. The

substance of the Rule is satisfied, when the name of the manufacturer and the address, which may be Pin code is sufficient to identify and locate the manufacturer. It is the substance, which is important and not the form thereof. Therefore, in our view the expression "complete address" appearing in Rule 32(c) (i) of the Rules, does not necessarily include the name of the State as well. Therefore, we approve the ratio of the judgments of this Court in Harkirat Singh, Hasmukh Mewada and Mohini Tea Leaves cases (supra) and answer the reference accordingly.

15. Question of law having been answered, let the petitions be placed before the learned Single Bench for appropriate decision in accordance with law.