(2013) 07 KL CK 0182

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15852 of 2013

Mars International India (P) Ltd. — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Legal Metrology Act, 2009 — Section 18, 18(2), 36(1)

Citation : (2013) 3 KLT 709

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Chandrasekhar B. Mutherkar, P. Sanjay and A. Parvathi Menon, for the Appellant; Viju Abraham, Sr. Government Pleader, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Whether Ext. P3 advertisement given by the petitioner showing that the product is available. "Now Rs. 15 onwards" (without mentioning the quantity/number) contravenes S. 18(2) of the Legal Metrology Act, 2009 (hereinafter referred to as the ''Act'') is the point that arises for consideration in this Writ Petition. The petitioner/Mars International India Private Limited (wrongly described as Mars India Pvt. Ltd in the ''Synopsis'' and the ''Affidavit'' in support of the Writ Petition), is a Company registered under the relevant provisions of the Companies Act, 1956, having its registered office at New Delhi. The petitioner is stated as associated with Mars group of companies and imports various brands of chocolates and other food products including the product-''SNICKERS''. It is pointed out that, the petitioner commenced its operation in India in 1994 and is doing the business in conformity with all the statutory requirements.

2. In connection with promotion of business of the petitioner, advertisements/ Boards like Ext. P3 came to be issued/installed, referring to the name of the product and projecting the profile as "Now Rs. 15 onwards". On coming across such advertisement, the 3rd respondent issued Ext. P1 notice dated 27.2.2013 to the petitioner, simultaneously serving similar notice (Ext. P2) to the Distributor of

the petitioner by name M/s. Jeny Agencies, alleging violation of S. 18(2) of the Legal Metrology Act. The third respondent is of the view that, since there is no declaration as to the net quantity or number of the commodity contained in the package, the advertisement saying "Snickers Now Rs. 15 onwards" constitutes infringement of S. 18(2) of the Act and is punishable under S. 36(1) of the Act. It is in the said circumstance, that the petitioner and the Distributor have been required to show cause in writing, why they should not be prosecuted for the offence.

3. On receipt of Ext. P1/P2 notices, the petitioner filed Ext. P4 statement of objections before the third respondent, pointing out that no contravention of any of the provisions of the Statute was ever made by them, in any manner. It was sought to be explained with reference to S. 18(2) of the Act that, it applies only to those advertisements which declare the price of any specific package of a pre-packaged commodity since it uses the words "contained in the package". In the case of the petitioner, Ext. P3 advertisement was only of a general nature, without reference to any specific package and hence the request to withdraw the impugned notice.

4. After considering the reply preferred by the petitioner, the third respondent issued Ext. P5 communication dated 13.4.2013, observing that the advertisement was in clear violation of S. 18(2) of the Act, punishable under S. 36(1) of the Act; and accordingly directed the petitioner to submit the packing registration for the said packages as well as the details of Partners/Directors/ persons responsible for conduct of the business. This made the petitioner to rush to this Court for immediate interference.

5. The learned Counsel appearing for the petitioner submits that the idea and understanding of the third respondent as to the alleged infringement of S. 18(2) of the Act is thoroughly wrong and misconceived. The specific words as "contained in the package" is with a definite purpose and meaning and it has to be read and understood with reference to the retail price to be shown on the package. The learned Counsel for the petitioner submits that, on reading the provisions together, Ext. P3 advertisement is only of a general nature, without reference to any particular package or its retail price and as such, there is no violation of S. 18(2).

6. The learned Government Pleader appearing for the respondents submits that, the expression used under the statute is quite categoric, which does not give any room for ambiguity. If an advertisement is to be made with reference to the retail price of a pre-packaged commodity, it has necessarily to contain a declaration as well with regard to the net quantity/number of the commodity contained in the package.

7. For the purpose of proper appreciation and adjudication, a complete reading of S. 18 becomes necessary. It reads as follows:

18. Declarations on pre-packaged commodities:- (1) No person shall

manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

(2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Sub-section (1) of S. 18 imposes a prohibition in the manufacture, packing, selling etc., of a pre-packaged commodity, unless it is in such standard quantities or number and bears the declarations and particulars as prescribed. Sub-section (1) of S. 18, itself is an indicator, to show that the retail sale price of a pre-packaged commodity is with reference to the standard quantity/number and there is a bounden duty to give a declaration and particulars with regard to the standard quantity/number. Now comes sub-section (2) of S. 18, which says that any advertisement mentioning retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package, as prescribed.

8. The ''retail sale price'' as defined under R. ''2(m)'' of the Legal Metrology (Packaged Commodities) Rules, 2011, (wrongly mentioned as ''2(1)'' in paragraph 4(b) and Ground E of the Writ Petition) means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer, which shall be printed on the package in the manner as specified therein. When the petitioner gives advertisement vide Ext. P3 to the effect that the product is available "Now Rs. 15 onwards", it naturally proclaims the existence of a package having the retail sale price of Rs. 15/-. When the advertisement refers to such retail sale price of the concerned package, it necessarily has to contain a declaration as well, with regard to the actual quantity/number of the commodity contained in such package.

9. It has to be noted that, while advertising that the product ''SNICKERS'' is available "Now for Rs. 15/- onwards", the petitioner very consciously omits to mention the particulars as to the net quantity/number of the commodity contained in ''such package'' available for ''such price'' (like 100gms/10 Nos. or as the case may be). In so far as the mandate of S. 18(2) is concerned, the operation is with reference to any advertisement. If there is any advertisement mentioning the retail price of a pre-packaged commodity, it has necessarily to contain a declaration as to the net quantity or number of the commodity contained in the package. Obviously, Ext. P3 advertisement refers to the retail sale price of Rs. 15/- of a given package, but omits to make the declaration as to the quantity/number of the commodity contained in such package. As such, this Court does not require any second thought to hold that S. 18(2) is attracted to the case in hand and there is infringement of the statutory prescription. This being the position, Ext. P1/P2 notices have been issued by the third respondent,

strictly in conformity with the statutory prescriptions, followed by Ext. P5 proceedings. As it stands so, Ext. P1 is not liable to be assailed under any circumstance. This Court finds that there is absolutely no merit or bona fides in the Writ Petition. It has, however, to be noted that ''five months'' are already over, after issuance of Ext. P1 notice and ''3? months'' are over after issuance of Ext. P5 communication rejecting the explanation/reply given by the petitioner, vide Ext. P4. Even after issuance of Ext. P5 letter dated 13.4.2013, the petitioner took more than two months to approach this Court by filing this Writ Petition. In any view of the matter, considering the persuasive submission made by the learned Counsel for the petitioner to grant some breathing time to remove the Boards/Advertisements and to have the defects rectified, this Court finds it fit and proper to grant a further period of ''one month'' to remove the Advertisement/existing Boards, which are not in conformity with S. 18(2) of the Act. It is however made clear that, this shall be subject to the condition that no further advertisements shall be effected by the petitioner, similar to Ext. P3, unless it is in conformity with S. 18(2) of the ''Act'' through any media-print/ visual or otherwise. With the above observation, the Writ Petition is dismissed.

