

(2009) 12 P&H CK 0042
In the Punjab And Haryana At Chandigarh

Samir Kanti Basu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Food Adulteration Act, 1954 — Section 20A, 23, 23(1), 23(1A), 7
Prevention of Food Adulteration Rules, 1955 — Rule 32

Citation : (2010) CriLJ 3147

Hon'ble Judges : M.M. Kumar, J; Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—A short question of law raised in this petition filed under Article 226 of the Constitution is:

Whether Rule 32(e) of the Prevention of Food Adulteration Rules, 1955, is ultra vires, being beyond the rule making power u/s 23(1-A)(d) of the Prevention of Food Adulteration Act, 1954?

2. The petitioner has also challenged order dated 25.5.2007 (P-5), passed by the Chief Judicial Magistrate, Chandigarh, holding that prima facie a case for offence u/s 7(ii) of the Prevention of Food Adulteration Act, 1954 (for brevity, "the Act") read with Rule 32(e) of the Prevention of Food Adulteration Rules, 1955 (for brevity, "the Rules") is made out against the accused. He has ordered them to be charge-sheeted.

3. Facts which emerge from the pleadings of the parties may first be noticed. Shri Samir Kanti Basu-petitioner is a nominee of Godfrey Phillips India Limited, a company registered under the Companies Act, 1956 and engaged in the manufacture of tea, which is sold under different brand names such as Gold Blossom, Jade Glow, Swan Lake, Symphony, Sugar Cup, Utsav, Samovar, Madhuban and Rangoli. On 29.10.1992, at 1.00 p.m. the Food Inspector of the

Chandigarh Administration inspected the business premises of one Baldev Raj and found 30 packets of 250 gms. each of Utsav Tea City for public sale in his shop M/s. Janta Karyana Store, Sector 23-C, Chandigarh. The said packets of Utsav Tea city were supplied by Subhash Singhal of M/s. Singhal Brothers, SCO No. 393, Basement, Sector 37-D, Chandigarh, for sale in Sector 23-C, Chandigarh.

4. After giving notice in writing in Form VI of the Rules, the Food Inspector purchased from the vendor three sealed packets of 250 grams each of Utsav Tea City for analysis. The original company packets were labelled, secured, fastened and then wrapped in a strong thick paper. The paper slip having S. No. 6386 and Code No. P-II/92 and signature of the Local Health Authority, Chandigarh, was further wrapped around the sample from bottom to top and pasted. After completing the other necessary formalities as required by the Act and the Rules, the samples of tea purchased by the Food Inspector were sent to the Public Analyst, Chandigarh, for analysis. The Public Analyst tested the sample on 26.11.1992 and concluded that the product was not labelled as per the provisions of Rule 32 of the Rules, inasmuch as, Batch/Lot Code No. of the product was not given. Accordingly, in the opinion of the Public Analyst the product was misbranded (P-2).

5. On the basis of the report of the Public Analyst, a complaint dated 2-3-1993, against Baldev Raj of M/s. Janta Karyana Store, Sector 23-C, Chandigarh (seller) and Subhash Singhal of M/s. Singhal Brothers, Sector 37-D, Chandigarh (whole seller), was filed by the Food Inspector-respondent No. 3 in the Court of Chief Judicial Magistrate, Chandigarh, which was registered as P.F.A. Case No. 15/93 (P-1). The trial was initiated against the aforementioned seller and whole seller. However, on an application filed u/s 20-A of the Act filed by the whole seller, the Chief Judicial Magistrate, Chandigarh, also summoned the manufacturer of the product, namely, Godfrey Phillips India, vide order dated 7.12.1995 (P-3). It is claimed that upon service in the month of February, 1999, the petitioner put in appearance on 10.3.1999. On 25.5.2007, arguments on charge were heard by the Chief Judicial Magistrate, Chandigarh, and the petitioner filed his detailed written arguments and by placing reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, , the petitioner prayed for discharge (P-4). However, the Chief Judicial Magistrate, Chandigarh, vide order dated 25.5.2007, while rejecting the submissions made on behalf of the petitioner and relying upon a Single Bench judgment of this Court rendered in the case of Surinder Nath Sood v. Union Territory, Chandigarh 2001(3) RCR (Criminal) 468 : 2001 Cri LJ 3390, found that prima facie an offence u/s 7(ii) of the Act read with Rule 32(e) of the Rules is made out against all the accused (P-5). The Chief Judicial Magistrate, Chandigarh, found that the judgment of Hon'ble the Supreme Court in Dwarka Nath's case (supra) would not apply to the present case because the legislature has amended the relevant provisions and inserted a new Section 23(1A)(d) in the Act on 1.4.1976. The Central Government has also carried out

amendment in Rule 32(e) of the Rules on 30.4.1989.

6. It is pertinent to notice that in the meanwhile the accused were admitted to bail vide an order dated 9.1.2007 passed by the Chief Judicial Magistrate, Chandigarh. Other than this, Godfrey Phillips India Ltd. has also filed a petition bearing Criminal Misc. No. 26609-M of 1999, u/s 482 Cr PC before this Court for quashing of complaint dated 2.3.1993 on the ground that Rule 32(e) of the Rules was struck down by Hon"ble Supreme Court in Dwarka Nath's case (supra). However, the said quashing petition was dismissed by this Court vide order dated 18.12.2002 (P-6). SLP preferred against the said order was also dismissed on 27.11.2006 (P7).

7. In the backdrop of aforementioned facts and circumstances the petitioner has filed the instant petition challenging vires of Rule 32(e) of the Rules as also order dated 25.5.2007 passed by the Chief Judicial Magistrate, Chandigarh (P-5). On 27.8.2007, notice of motion and notice regarding stay was issued by a Division Bench of this Court and subsequently on 10.10.2007 further proceedings before the Trial Court were stayed.

8. In their separate replies filed on behalf of respondent No. 1 and respondent Nos. 2 & 3 various legal submissions have been made and we deem it appropriate to discuss the same in the later part of the judgment.

9. We have heard learned Counsel for the parties at a considerable length and have also gone through the paper book with their able assistance. At the outset it would be profitable to read in juxtaposition relevant un-amended as well as amended provisions of Section 23 of the Act and Rule 32 of the Rules, which are extracted as under:

----- Un-amended Section 23 of the Act: Amended Section 23 of the Act (After 1.4.1976)
23. Power of the Central Government to make rules: 23. Power of the Central Government to make rules. (1) The Central Government may after consultation with the (1) The Central Government may, Committee and subject to the after consultation with the condition of previous publication, Committee and after previous make rules publication by notification in the Official Gazette, make rules to carry out the provisions of this Act;

Provided that consultation with the Committee may be dispensed with if the Central Government is of the opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case, the Committee shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Committee may make in relation to the amendment, of the said rules.

(1A) 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:

(a) to (c) xxx xxx xxx (a) to (c) xxx xxx xxx

(d) restricting the packing and (d) restricting the packing and labelling of any article of food labelling of any article of food and the design of any such package and the design of any such package or label with a view to preventing or label with a view to preventing the public or the purchaser being the public or the purchaser being deceived or misled as to the deceived or misled as to the character, quality or quantity of character, quality or quantity of the article; the article or to preventing adulteration. Un-amended Rule 32 of the Rules Amended Rule 32 of the Rules (after 30.4.1989) 32 Contents of the label.-Unless otherwise provided in these rules "32. Package of food to carry a there shall be specified on every label.-Every package of food shall label: carry a label and unless otherwise provided in these rules there (a) the name and business address shall be specified on every label: of the manufacturer or importer or vendor or packer, (a) the name, trade name or description of food contained in xxx xxx xxx the package;

(b) the names of ingredients used in the product in descending order of their composition by weight or volume as the case may be:

xxx xxx xxx

(c) the name and complete address of the manufacturer or importer or vendor or packer.

(d) the net weight or number or measure of volume of content, as the circumstances may require....

xxx xxx xxx

(e) a batch number or code number (e) A distinctive batch number or either in Hindi or English lot number or code number, either numerals or alphabets or in in numerals or alphabets or in combination: combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No. " or Batch or "Lot No. " or "Lot" or any distinguishing prefix:

Provided that in the case of food Provided that in case of canned package weighing not more than 60 food, the batch number may be grams particulars including the given at the bottom, or on the lid statement under any clause need of the container, but the words not be specified. "Batch No. " given at the bottom or on the lid, shall appear on the Explanation: The term "label" body of the container. means a display of written, printed, perforated, stenciled, (f) the month and year in which embossed or stamped matter upon the commodity is manufactured or the container, cover lid and/or prepacked; crown cork of any food package. xxx xxx xxx

Provided also that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60 g. but not more than 120 g. and food packages weighing not more than 60 g. particulars under Clauses (d) and (e) need not be specified:

Provided also that in case of package containing bread and milk including sterilised milk, particulars under Clause (e) need not be specified: xxx xxx xxx

(g) the date of expiry in case of packages of aspartame which shall not be more than three years from the date of packing;

(h) xxx xxx xxx

(i) the months and year in capital letters, up to which the product is the best for consumption, in the following manner, namely:

...

Explanation I to III xxx xxx

Explanation IV -A Batch Number or code Number or Lot Number is a mark of identification by which the food can be traced in manufacture and identified in distribution.

xxx

xxx

xxx-----

(emphasis added)

10. A perusal of Section 23(1) and 23(1A)(d) of the Act would show that by an amendment carried out on 1.4.1976, after the judgment of Hon"ble the Supreme Court in Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, , the provisions has been specifically amended. It is evident that u/s 23(1), the Central Government is empowered to frame Rules after consultation with the Committee to carry out the provisions of this Act. In the unamended Section 23(1) the expression "to carry out the provisions of this Act" were not incorporated, which have now been inserted by the amendment of 1.4.1976. The other distinguishing feature is that in Section 23(1A)(d) of the Act another noticeable amendment has been incorporated. The restriction of packing and labelling of any article of food and the design of any such package or label can also be restricted for preventing adulteration. The expression "to preventing adulteration" has been added by the amendment carried out on 1.4.1976.

11. It is in the light of the aforesaid power acquired by the Central Government to make Rules to carry out the provisions of the Act and to prevent adulteration in food items that Rule 32 has also been amended with effect from 29.4.1989. A conjoint reading of Rule 32 of the Rules would reveal that apart from the requirement of fixing a label on every package of food with details of the name, trade name or description of food contained in the package, various other requirements have also been made mandatory. For example, under Rule 32(b) the names of ingredients used in the product in descending order of their composition by weight or volume etc. has also been provided. Rule 32(c) further provide for the name and complete address of the manufacturer or importer or vendor or packer. According to Rule 32(d), the net weight or number or measure of volume of content etc. have to be expressed in terms of either average net

weight or minimum net weight.

12. The significant clause under Rule 32(e) has again made a mandatory provision of specifying on every label a distinctive batch number or lot number or code number either in numerals or alphabets or in combination. Such numerals or alphabets or their combination are required to be preceded by the words "Batch No. " or "Batch" or "Lot No. " or "Lot" or any other distinguishing prefix. It has also been provided in Clause (f) of Rule 32 to disclose the month and year in which the commodity is manufactured or pre-packed. Even Clause (i) obliges the manufacturer to display up to which month or year the product is best for consumption. The Rule has illustrated the way it should be done. Explanation IV further makes it clear that a "Batch Number" or "Code Number" or "Lot Number" is a mark of identification by which the food could be traced in manufacture and identified in distribution. The whole object of the Rule as it now stands is that on identifying the adulteration in food it may be easy to withdraw the entire stock of food from circulation in the market or which may be in the process of manufacturing or sale, by identification by lot number or batch number or code number. These provisions can easily be read in conjunction with Section 23(1) and 23(1A)(d) of the Act where the Rule making power has been given for the purposes of preventing adulteration. If the lot number/batch number/code number or lot/ batch/code have been recorded then it would be easier to prevent any adulteration by withdrawing the food from circulation for sale to the consumer. Such a food may be in the hands of the retailers or lying at the manufacturing level or ready for sale with the manufacturer to the retailer. All these provisions were missing when the judgment in *Dwarka Nath and Another Vs. The Municipal Corporation of Delhi*, was rendered by Hon^{ble} the Supreme Court. It is in this context that in para 18 of the judgment, Hon^{ble} the Supreme Court has observed that there was no power given to the Central Government to frame Rules requiring various things to be done. The aforesaid view is discernible from para 18, which reads thus:

18. We have now to see whether any of the clauses in Section 23(1) on which reliance is placed on behalf of the Attorney-General and the respondent will sustain the provisions contained in Clauses (b) and (e) of Rule 32. We are not able to find anything in Clauses (c), (f) and (g) of Section 23(1) of the Act, which will give power to the Central Government to frame rules requiring the name and business address of manufacturer or vendor being given; or for Batch Number or Code number being given on the labels. Clause (c) deals with provisions for imposing rigorous control over production, distribution and sale of any article or class of articles of food notified by the Central Government in the Official Gazette. No notification issued by the Central Government in this behalf regarding ghee has been brought to our notice and therefore Clause (c) does not apply.

13. It is, thus, evident that the very power to frame Rules to carry out the provisions of the Act was missing. The omission has now been supplied by the

amendment carried out on 1.4.1976 in Section 23(1) of the Act. To achieve the same object, Section 23(1A)(d) has also been amended by adding the words "to preventing adulteration". The basic premise on which Rule 32(b) & 32(e) was found to be beyond the legislative power of the Parliament is evident from the perusal of paras 20 & 21 of the judgment in Dwarka Nath's case (*supra*), which reads thus:

20. This leaves us for consideration the question whether Rule 32 (b) and (e) fall within the ambit of rule making power under Clause (e) of Section 23(1). We will first take up for consideration the vires of Clause (e) of Rule 32. There cannot be any controversy that the object of a rule framed under Clause (d) must be with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article. We have already pointed out that in this case the label contained the words "pure ghee" and on analysis of the sample it has been found to conform to the standard. It is difficult for us to appreciate how the giving of the batch number or the code number alone without giving any further particulars such as date of manufacture of the article of food and the period within which the said article has to be utilised, used or consumed and the quantity of the article in a container, will prevent the public or the purchaser being deceived or misled as to the character, quality or quantity of the article. No attempt has been made by the respondent to establish any relation between the giving of the batch number or the code number with the public or the purchaser being prevented from being deceived or misled in respect of the matters referred to in Clause (d). We are not able to find any rational or even a remote connection between the batch or code number artificially given by a packer and the public or the purchaser being prevented from being deceived or misled as to the character, quality or quantity of the article, contained in a sealed tin.

21. There is no definition of the expression "batch number" or "Code number" either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilised, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that Rule 32(e) is beyond the rule making power even u/s 23(1)(d) of the Act. The appellants could not be convicted for any violation of Clause (e) of Rule 32 as the said provision, as pointed out above, is invalid.

14. All the aforesaid lacunas have now been plugged by carrying amendment in Section 23(1) and 23(1A)(d) of the Act. At the cost of repetition, it is now mandatory by virtue of Rule 32(a) & (b) to disclose the name, trade name and

description of food contained in the package along with the names of ingredients used in the product in descending order as has already been indicated in the preceding para. It has also been provided in Clause (f) of Rule 32 to disclose the month and year in which the commodity is manufactured or pre-packed. Even Clause (i) obliges the manufacturer to display upto which month or year the product is best for consumption. The Rule has illustrated the way it should be done.

15. It is, thus, evident that all the lacunas pointed out by Hon''ble the Supreme Court in Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, have been taken care of and it cannot be now concluded that the disclosure of batch number or lot number or code number alone would not serve any purpose as was observed in Dwarka Nath's case (supra).

16. The argument of Mr. R.S. Cheema, learned Counsel for the petitioner that the amendment has not met all the deficiencies pointed out by Hon''ble the Supreme Court in Dwarka Nath's case (supra) has not impressed us and we do not find any substance in his argument that Rule 32(e) of the Rules be declared beyond the Rule making power of the Central Government or Section 23(1) or 23(1A)(d) of the Act suffers from any constitutional infirmity warranting interference of this Court. Accordingly, the writ petition is liable to be dismissed.

17. For the reasons aforementioned, this writ petition fails and the same is dismissed.