

(1999) 10 CAL CK 0019

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, W.P. No. 1189 (W) of 1999 with,
A.S.T. No. 2330 of 1999

Shilpi Banerjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 47
Essential Commodities Act, 1955 — Section 16(2), 3

Citation : (2000) 1 CALLT 580 : 105 CWN 584

Hon'ble Judges : Satyabrata Sinha, Acting C.J.;Mahammed Habeeb Shams Ansari, J

Bench : Division Bench

Advocate : Mr. S. Pal, Mr. Maharaja Sinha and Mr. Debducta Sen, for the Appellant; Mr. N.C. Roy Chowdhury, Mr. Biswanath Chakrabarty and Mrs. Gita Mukherjee, Mr. P.K. Roy, Mr. Pradip Ghosh, Mr. Sumit Mondal, Ms. S. Hariharan, Mr. Amalendu Chakraborty, Mr. Rabindra Nath Pal, Mr. Hirak Mitra, Mr. Soumen Sen, Mr. Debasish Das, Mr. Pradip Dutta, Ms. Trina Banerjee, Mr. Ranbir Banerjee, Mr. Ananya Sengupta, Mr. Anindya Mitra and Mr. N.C. Bhattacharjee, Mr. Tapan Chandra Dutt, Mr. Tarun Kumar Roy and Mr. Haridas Das, for the Respondent

Judgement

S.B. Sinha, ACJ.

1. This application in the nature of Public Interest Litigation has been filed by one Shilpi Banerjee who is said to be a social activist, interested in economic growth of the country. According to the petitioner for the use of tin containers the Government issued a circular on 9th March, 1993 specifying therein that 15 kgs. of containers for packaging Vanaspati, the quality of the tin should conform to the standard of I.S.I. 10325-1982.

2. In the application, it has been stated that Vanaspati Oils are being packed in the tin which do not conform to the provision of the said order. The petitioner in the aforesaid premises has prayed for the following reliefs :--

"(a) Writ in the nature of mandamus do issue-

(i) Immediately commanding the respondent Nos. 1,2, 3, 4, 5, and 6 and each of them to modify rescind withdraw and/or cancel the floor-pricing policy of tinplates/TFS. as per Commerce Ministry's Notifications Nos.34 and 35 (RE-98) 1997-2002 dated 10/11th December, 1998 but only strengthening the same by plugging any loop-holes;

(II) directing that the Import of tinplates/TFS secondaries, especially misprint, should be listed under the Banned List or Restricted List strictly under the Actual User stipulations;

(III) Import and other allied duty should be enhanced on tinplates/ TFS secondaries vis-a-vis prime;

(iv) floor price of import of tinplates/TFS secondaries which has been recently fixed by Government of India should be revised higher to discourage such import. At least, lowering of same should be forbidden;

(v) liberal view should be taken for imposing antidumping/safeguard duty on imports of tinplates/TFS prime and tinplates/ TFS secondaries (non-prima);

(vi) All plastic containers for packaging Edible Oil and Vanaspati must be made from foodgrade, biodegradable plastic having ISI mark.

(vii) to prosecute and/or Impose penally upon any defaulter of the Government policy;

(b) Writ in the nature of certiorari directing the respondents Nos. 1 to 9 and each of them to certify the records and documents concerning such policy as subject of this writ and to transmit the same to this Hon'ble Court so that upon consideration of the same considerable Justice can be made;

(c) a writ in the nature of prohibition;

(i) prohibiting the respondents from using and/or making it sure that no secondhand/recycled and non-prima materials be used for any food packaging and that such packages should be made out of prime tin-plates only and/or prohibiting use of the containers made out of second hand recycled tins and/or seconds by recycling process;

(ii) prohibiting the respondents from allowing use of any tinplate containers in food packaging without having ISI marks;

(iii) prohibiting any use of recycled tin containers for food packaging by directing the State Government to implement Gazette Notification No. GSR 575(E) of 4th August, 1995 In letter and in spirit.

(iv) prohibiting packaging edible oil and vanaspati in any substandard plastic material without ISI mark;

(d) injunction restraining the said respondents from allowing any package of food articles to be made out of recycled tin containers and/or new containers made of seconds, waste-waste, misprints or defective tinplate/TFS;"

3. With a view to ensure quality of packaging the Vanaspati product, various Notifications were Issued from time to time. The first of such Notification is dated 25th November, 1985 in terms whereof, the stock or sale of vegetable oil products were prohibited unless such products were packed In containers of the type, size and description specified in the schedule appended thereto. It was further stated that 15 Kg. square tin for vanaspati and edible oils should conform to IS-10325 as would appear from Item No. 1 of the schedule appended thereto.

4. The Notification dated 25th November, 1985 was amended by another Notification dated 15th April, 1986 issued by the Vegetable Oil Products Controller for India in exercise of Its power conferred upon it under sub-clause (1) of Clause 14 of the Vegetable Oil Products Control Order which continued to be in force in terms of sub-section (2) of section 16 of the Essential Commodities Act, 1955. In the schedule appended thereto a provision had been made that tin containers of different capacity i.e. from 2 to 20 kg. would have to conform I.S.I, specification- What would be the I.S.I, specification and the procedures laid down thereto? It is contained in Bureau of Indian Standards Act, 1986. The said Act was repealed by Indian Standard Institutions (Certification Marks) Act, 1952. The Indian Standard Institutions (Certification Marks) Act, 1952 was revised by IS-10325 to cover tins for packing 15 Kgs. of Ghee, Vanaspatl and all other edible oils which was adopted by the Bureau of Indian Standards on 3rd March. 1989.

Clause 4.2.1. read thus :--

"Prime grade of first grade tinplate of nominal thickness 0.28 mm (see IS 1993 : 1982) shall be used for the body, ends and capseals on lids of the tins."

5. It is not in dispute that in the mean time several notifications had been issued i.e. on 19th June, 1992, 9th December. 1992, 9th March, 1993 and 1st November, 1995 in terms of the notification dated 16th April, 1986.

6. The question which has arisen for consideration is as to whether the said notifications are valid keeping in view the fact that the said notification does not permit issuance of such Intermediate Notifications/Orders. In the meantime, the Central Government in exercise of its power conferred upon it u/s 3 of the Essential Commodities Act, enacted Edible Oils Packaging (Regulation)/Order, 1998. Clause 3 of the said order reads thus :--

"3. Prohibition as to sale to.--On and from the 15th day of December, 1998, no person shall sell or expose for sale, or distribute, or offer for sale, or despatch, or deliver to any person for the purpose of sale any edible oil-- (a) which does not conform to the standards of quality as provided In the Prevention of Food Adulteration Act, 1954 (37 of 1954) and Rules made thereunder, and

(b) which is not packed in a container, marked and labelled in the manner as specified in the Schedule-I."

7. The schedule contained in the said Act, Inter alia, states :--

"Requirements to be complied with by the registered packer-

(1) No registered packer shall pack any edible oil except under and In accordance with the provisions of this Order.

(2) Every registered packer shall pack edible oils In conformity with the sanitary and other requirements specified in the Schedule-IV.

(3) Every registered packer shall, in regard to packing, making and labelling the containers of edible oils, comply with the requirements specified in the Schedule-I.

(4) Notwithstanding anything contained in sub-clause (1) and (2), the Edible Oils Commissioner may be ordered, published in the Official Gazette, specify any other conditions to be complied with by a registered packer and it shall be the duty of every registered packer to comply with such conditions."

8. Edible oil is required to be packed in conformity with the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and the Prevention and Food Adulteration Act, 1954 and the rules framed thereunder. It is, therefore, clear that by the said order the provision of the Notification dated 25th November, 1985 as amended by the Notification dated 15th April, 1986 has been restored.

9. The Indian Tin-plate Company which has been added as respondent no. 11 has supported the petitioner. In its affidavit, inter alia, it has been stated, that the quality of plastic containers for edible oils and vanaspathi is also not regulated in India, as a result, cheap plastic scrap such as hospital waste, used syringes etc. find their way through recycling into plastic containers used for food packaging. Hence, food regulations should also stipulate compulsory use of prima, food-grade, biodegradable, plastic granules for food containers and be ISI certified.

10. M/s. The Vanaspathi Manufacturers' Association of India has also filed an affidavit-in-opposition. In its affidavit-in-opposition Eastern India Edible Oil Manufacturers Association Inter alia, stated that the provision of Vegetable Oil Products (Control) Order, 1947 and Vegetable Oil Products (Standard of Quality) Order, 1975 were in force prior to coming into force of the Vegetable Oil Products (Regulation) Order, 1998 and Edible Control Packaging (Regulation) Order, 1998. It has been alleged that as per BIS Certification Mark Act, the scheme of ISI certification Mark on vanaspathi is voluntary and not mandatory and for packaging of vanaspathi in plastic containers the Government has promulgated the use of container conforming relevant ISI specification. According to the said respondents, the rules framed under the provision of Food Adulteration Act also

allow use of containers made of plastic materials conforming to the Indian Standard and Edible Oil including vanaspati has been allowed to be packed In non ISI tin containers since long as there is no scientific data available to establish toxicity carcinogenic effect. However, it has been accepted that the use of recycled and second hand tin containers for packaging of vanaspati had been banned and/or prohibited. It has been submitted that even in terms of Vegetable Oil Products Regulation Order, 1998 the ISI certification mark scheme is not mandatory as the minimum requirement of packaging has been specified as per the provisions made under rule 49 of the Prevention of Food Adulteration Act, 1954 as also Edible Central Packaging (Regulation) Order, 1998.

11. The affidavit-in-opposition filed on behalf of added respondent No. 13, affirmed by one Kunal Banerjee.

12. An affidavit-in-opposition has also been filed on behalf of Respondent Nos. I to 4, 6 and 9, affirmed by one Santi Kumar Roy, Development Officer of the Ministry of Food & Consumer Affairs. It has, Inter alia, been stated :--

"I say that the Government has been keeping a close vigil on the availability of prima quality tins for the manufacture of ISI marked tin containers, but on some occasions, the Government had to allow the manufacturers to use non-ISI tin containers in view of shortage of tin plate. Consequently another Notification being GSR No. 575(E) dated 4th August, 1995 was Issued by the Ministry of Health and Family Welfare, which allowed containers for vegetable oil to be manufactured only by new tin-plate for packaging of Edible Oils under the prevention of Food Adulteration Act and Rules framed thereunder with effect from 3rd February, 1996.

With regard to the allegations contained In sub-para graphs (a) to (J) of paragraph 4 of the petition, I say that as per BIS Certification Mark Act, the scheme of ISI Certification Mark on Vanaspati is voluntary and not mandatory. For packing of Vanaspati in plastic containers, the Government has this time and again permitted the use of containers conforming to relevant ISI specifications. I say that the relevant provisions of Prevention of Food Adulteration Rules also allow use of containers made of plastic materials conforming to Indian standards mentioned therein. I say further that since edible Oils including Vanaspati has been allowed to be packed In non-ISI tin containers since long, there is no scientific data available to establish toxicity/carcinogenic effect of the latter on Oils. The Government has long back prohibited use of re-cycled second hand tin containers for packing of Vanaspati and Vanaspati manufacturing units are subjected to regular checks by the Field Officers of the Directorate of Vanaspati, Vegetable Oils and Fat and stern action is taken against the erring units which violate any of the provisions of the orders passed by the Government."

13. It has further been stated that another order viz., Edible Oil Packaging Regulation Order, 1998 contains Clause 5 which is to the following effect :--

"5. Edible Oil shall be packed in conformity with the provisions of the Standards

of Weights and Measures (Packaged Commodities) Rules, 1977 and the Prevention of Food Adulteration Act, 1954 and Rules thereunder."

14. According to the said respondent, 85% of the bulk of the total consumption is packed only in new containers under the Prevention of Food Adulteration Act.

15. The case at hand must be considered keeping in view the public health. There cannot be any doubt whatsoever that the Government of India is an ultimate repository of power for the aforementioned purpose but having regard to the provisions contained in Article 47 of the Constitution of India read with Article 21 thereof all steps must be taken by the Central Government to see that public health in any way is not affected. In this connection, it is relevant to mention the policy decision of the Central Government Itself dated the 28th October, 1997 wherein it is stated :--

"Complaints have been received from certain quarters that new tins made from sub-standard materials are being used for packing of vanaspati etc.

The matter has been examined in this Ministry. It has been decided to rescind with effect from 15.11.97 the Order No.12-VP(1)/91 dated 1.11.95 issued in terms of the proviso to Notification GSR No.867(E) dated 25.11.1985 permitting the use of only new tin containers for packing of vanaspati and other vegetable oil products. A new Order restoring the provisions of Notification GSR No. 867(E) dated 26.11.1985, as amended vide Notification GSR No.628(E) dated 15.04.1986, has been Issued by the Vegetable Oil Products Controller for India. The new Order makes it mandatory for the vegetable oil products industry to pack vanaspatl in new containers carrying ISI certification only. A Copy of the said Order dated 27.10.1997 is enclosed herewith for compliance.

Attention is also Invited to Notification GSR No.575(E) of the Ministry of Health a Family Welfare, prohibiting the use of second hand tin containers for packing of edible oils and fats w.e.f. 4th February, 1996.

The above requirements have to be complied with by the industry scrupulously."

16. The respondents have a duty to ensure that Vanaspatl and other edible oils used as cooking medium and consumed regularly by the public are packed only in containers conforming to 1S1 Specifications. The Central Government and the other authorities have a duty to see that the containers may not be made out of the second hand tin plates but by use of new tin plates in respect whereof there Is no dearth In India. The three categories of tin plates which are being manufactured In India as would appear from the Bureau of Indian Standards Specification Manual reads thus;

"(I) Prima : Free from defects readily visible to the naked eye, whole surface is usable;

(II) Seconds : Minimum usable area is 75%;

(III) Waste/Waste : Has visible imperfections e.g. tinning defects, rust patches,

porosity of severe magnitude or frequency material is generally supplied in mixed sizes, tempers and finishes. Material is off limit in tin coating masses and thickness of base plate, with pin holes."

17. It appears to us that the prime tin plates should be used for the aforementioned purpose. Apart from the fact that notification dated 15.4.1986 specifically mandates that no Vanaspati shall be packed in containers other than those carrying ISI Certification Mark.

18. The Vegetable Oil Products Controller of India has passed orders from time to time, use of non ISI tins containers for packing of Vanaspatl in 15 K.g. tins, and the same was permitted upto 10.12.1992 by reason of notification dated 10.6.92. The said notification was valid for a limited period. Yet again on 9.12.1992 a notification was issued by the self-same authority permitting packing of Vanaspati in new tins made out of prime quality tin plate whether of ISI or non-ISI grade upto 28th February, 1994. Curiously enough only a few days thereafter viz., 9.3.93 the said notification was discontinued. Yet again on 19.10.1995 a clear unanimous decision was taken by the concerned Ministry to allow use of only new tin for packaging of edible vegetable oils products with effect from 1st November, 1995. Prevention of Food Adulteration Rules was also amended to the said effect by a Notification dated 16th October, 1995. Sub-rule (5) of Rule 49 of the Prevention of Food Adulteration Rules reads thus :--

"49(5)--A utensil or container made of the following materials or metals, when used in the preparation of food shall be deemed to render it unfit for human consumption."

19. By reason of a Notification dated 4.8.1995 Clause "6" was added to the said Rules as a result whereof, use of secondhand tin containers for packaging of edible oils and fats was brought within the purview of the said Rules.

20. It is unfortunate that the Central Government had taken different stands at different point of time. A decision regarding packaging of food material particularly those food materials which are used daily in every household should have been viewed with concern and all steps ought to have been taken to see that the provision of Article 47 read with Article 21 are implemented in their true letter and spirit. The court. It is true, do not normally Interfere with the policy decision of the State. But in the instant case two orders had been Issued, viz., (1) Vegetable Oil Products (Regulation) Order, 1998 in terms of GSR 581 (E) dated 16.9.98; and (2) Edible Oils Packaging (Regulation) Order, 1998 in terms of GSR 581 (E) dated 16.9.98.

21. The said orders constituted a retrograde step, so far as the usage of inferior quality, non-prime tinplate Is concerned. In that, it would be Injurious to health since the integrity of protective tin coating if not guaranteed In non-prime tinplate, thus exposing the base metal to the acids in the packaged contents. This could render the contents toxic and Is greatly injurious to the health of the non-suspecting consuming public. This court also cannot shut their eyes that

Food Adulteration in India is rampant. Packaging articles in sub-standard materials Including tins is also rampant. The Police and the Statutory Authorities created under the Prevention of Food Adulteration Act and other statutes, their conduct have not inspired such confidence as has been reposed in them in implementing the said orders in their true letter and spirit. These basic facts cannot be said to be unknown to the highest authorities.

22. Before us various photographs have been produced to show how the second hand tins are used for packaging the food materials. This cannot be permitted. We, therefore, direct all statutory authorities to see that the aforementioned two orders are implemented in a true letter and spirit. For the aforementioned purposes the Controller should ensure surprise Inspection regularly In the factory premises of the manufacturers.

23. In the event, it Is found that even if slightest deviation on their part in Implementing the said orders, has taken place they be firmly dealt with. We also direct the respondent nos.1 to 4 to consider the question as to whether mandatory orders under the Essential Commodities Act as also under the Prevention of Food Adulteration Act should be Issued whereby and whereunder only use of prima steel be permitted. We are making these observations keeping In view the fact that there Is no dearth of prima steel In the country.

24. This writ application is disposed of with the aforementioned directions.

M.H.S. Ansari, J.

25. I agree.

26. Application disposed of