(2007) 01 KL CK 0075

In the High Court Of Kerala

Case No : OP No. 24559 of 1998 (W)

The National Foundation for Consumer — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Citation : (2007) 01 KL CK 0075

Hon'ble Judges : V.K.Bali, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : M.L. George and Party in Person, for the Appellant; K. Jaju Babu, for the Respondent

Judgement

M. Ramachandran, J.—Petitioner has brought to the attention of this Court a substantial issue of general importance. For a variety of reasons, there has been, however, delay in finally disposing of the same.

2. The Original Petition was filed during December, 1998. The main relief prayed for was to quash the decision of the Government of India, whereby there was a direction to incorporate only the maximum retail price (MRP) on all packaged commodities. The offending part of the order, according to the petitioner, was that it was decided thereby not to insist marking of ex-factory price as recommended by majority members of the Expert Committee. Consequential reliefs were also asked for.

3. A learned Judge had found lethargy on the part of the respondents to file their counter affidavits and had ordered cost to be paid to the petitioner in this regard, in the year 2000.

4. Counter affidavit was filed by the Union of India later, but some details, as essential, were withheld and further directions were issued to give supplemental information. An affidavit has been filed by the Deputy Director of Legal Metrology on 28-02-2006.

5. We had heard Mr.M.L.George, who appeared in person, representing the petitioner-Society. We had also heard the Assistant Solicitor General, appearing for the Union of India, as well as counsel representing the party respondents.

6. It appears necessary that further directions are required to be issued, as evidently the issue has not so far received full or adequate attention it deserves. The petitioner may be justifiably correct in his submissions that the questionable corrupt practices adopted at different levels in the industry directly lead to a situation where hundreds of crores of rupees are lost by consumers every year, giving trading sectors simultaneous unmerited advantage. In any case, the matter requires a second look.

7. During the year 1997 the petitioner had filed O.P. No. 11073 of 1997 inviting the attention of the Court the necessity for issuing appropriate orders, whereby certain provisions of the Rules under the Weights and Measures Act require to be struck down.

8. At the interlocutory stage, a learned single Judge had issued directions to the respondent concerned to ensure that the Committee, which had already been constituted for looking into such matters, were to expedite the decision on the matters already referred to it. The Original Petition (O.P. No. 11073 of 1997) had come up for final hearing thereafter on 14-09-1998. Since the Court had not been given details about the recommendation of the Committee, a direction was issued that the consequential steps envisaged by order dated 06-01-1998 were to be expedited.

9. Evidently, this had not the desired effect. The petitioner points out in the present Original Petition that he had been advised by Ext.P5 communication dated 14-10-1998 that the report of the committee had been placed before the Government of India and on the basis of the recommendation "the requirement of declaration of ''MRP inclusive of all taxes'' under the provisions of the Packaged Commodity Rules 1997 has been continued". It appears that a copy of the report had been forwarded to the petitioner. This is separately produced as Ext.P6. In this writ petition, the petitioner has highlighted our attention to the perfunctory manner in which the issue had been dealt with. He therefore submits that a writ of mandamus necessarily is to be issued to reconsider the issue at least on the basis of the recommendations of the majority members of the Committee. With facts and figures, he points out that the industry and the Government had been moving in hand in gloves so as to fleece the gullible public, and this has been going far too long.

10. According to him, the requirement that MRP alone need be inscribed in the packaged commodities as now directed to be followed facilitates the retail merchants to reap a benefit far in excess of their entitlements, since there is nothing to indicate at what price the commodity had reached them. The suggestion was that if ex-factory price, on which alone in most cases excise duty was payable, was recorded, the presence of MRP would have indicated the wide

margin that was receivable by the retailer. Naturally, there was possibility of streamlining of the prices by self imposed restrictions especially since the situation would have opened the eyes of the general public about possible corrupt practice. It may be unethical to insist that the general public is to pay a higher price than that might be authorised or acceptable as fair. Petitioner submits that when such situation had presented before the Committee, specially constituted for the purpose, and especially since duty to enquire into the system and prescription of remedy had been entrusted with them by no less a body than the Parliament, burying the issue in an unceremonious manner, without taking responsible persons into confidence, was an act on the boarder lines of mala fide exercise of power. The report did not contain recommendations, and by any standards, it would have been unacceptable.

11. Although two counter affidavits have been filed by the Central Government, we are not satisfied that the procedure has been adequately explained. We feel that it will be appropriate to dispose of the petition simultaneously issuing a direction to the Government to spare some serious thought and time to examine the necessity for incorporation of essential details taking into account suggestions and grievances that have been highlighted by a responsible Association.

12. This cannot in any way be objectionable, it seems. Consequent to the discussions and deliberations in the Parliament, an Expert Committee had been constituted by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution to review and make suitable recommendations in the matter bringing in acceptable method of declaration of retail sale price on pre-packed commodities. The Commission was to consist of a Chairman, the ex officio Joint Secretary in charge of Weights and Measures and were to include Governmental representation from the Excise Wing of the Ministry of Finance and representatives from the Ministry of law, persons from National Institute of Financial Management & Research, Bureau of Industrial Cost and Prices, Commissioner of Sales Tax, representatives from the Federation of Indian Chamber of Commerce and Industries (FICCI), a person from Association of Chamber of Commerce and Industry of India, representatives from Confederation of Indian Industries, Delhi School of Economics, Department of Commerce and independent persons, who had expertise in the complex consumer relations. The Committee had been constituted on 28-01-1994 and was to finalise and submit its recommendations for the consideration of the Government within three months, with authority to co-opt experts. The terms of reference were:

1. Taking into consideration the socio-economic system of our country, what is the best method of declaring the uniform retail sale price of a pre- packed commodity on the package as applicable for entire country.

2. Which is the agency who should be made responsible for declaration for such retail price? and

3. How the suggestions made at points above could be enforced to provide protection to the consumers?

The terms of reference were extended thereafter by 14-11-1995 to include consideration of marking ''normative price'' on a pre- packed commodity in addition to declaration of MRP. The final report was to come by 15-12-1995, though subsequently extended up to 31-12-1995.

13. We have to notice that the writ petition had been filed in 1997 finding that precious little progress had been made. An undated report, after the Original Petition was disposed of, has reached the petitioner, but as rightly contended, it was neither here nor there again relegating the issue for decision of the Government. A few recommendations are incorporated in Chapter V of the Report. On the principal issue, the Committee noted that the three organisations representing the industry were not in favour of the suggestion, viz., marking the manufacture''s price on the package in addition to the MRP. All other non-official members as also the Sales Tax Department stood solidly against the said stand. According to them, the declarations of two prices should be made on all pre-packed commodities in the interest of consumers. But the final recommendation of the Committee was to record as following:

Since there was a sharp and irreconcilable difference of opinion on the question of marking the manufacturers/first point/ex-factory price along with the MRP on a pre-packed commodity, the Committee felt that the decision be left to the better judgment of the Government, which may take a decision in the overall interest of the consumers.

This was an extremely unsatisfactory disposal. The reasons given are not convincing, and since the files have been kept back, one is not in a position to follow the nature of the deliberations and the manner in which the recommendations came to be recorded. It was agreed that declaration of MRP should continue. The other recommendations were only frills without substance. Solace was that the ban existing in the Rules on affixing stickers to increase the price indicated by the manufacturer on a package was to continue.

14. It is clearly noticeable that the Committee had failed in discharging the duties expected of them even though the deliberations might have been there for a period of three years. It is also important to note that the report did not refer at all to the additional terms of reference viz., as to whether marking of ''normative price'' in addition to declaration of MRP was to be introduced. Suffice it to say that the report that had emerged could not have been considered as adequate by any standards. Further, it is evident from Ext.P5 communication that the Government on the basis of the recommendations of the Committee had decided to continue the system, whereby declaration of MRP was to be there on the packaged commodity. Practically, there was reluctance to budge from the position in spite of criticism that this had proved to be detrimental to public interest.

15. When the matter had come up before a single Judge (M.Ramachandran, J), in view of the importance of the question and as the matter projected public interest, it had been referred to a Division Bench for consideration. On 02-02-2006, the Bench had directed that a further affidavit is to be filed specifying therein as to who in the Ministry had dealt with the report of the Expert Committee and given his opinion for continuing with the existing legislation. This was because the Court felt that the approach was evasive. Although the Committee had been constituted, primarily appreciating the anxiety of the Parliament as gatherable from Chapter IV of the Report, viz.,

(i). Maximum retail price was quite often fixed on the higher side. In the market, sometimes even the maximum price was not adhered to and price still higher than the MRP was charged.

(ii). Maximum price was being marked on the commodity by the manufacturers without any control and the present law was not serving any purpose to protect the consumers against high profit margin.

(iii). The Committee be asked to fix a reasonable limit of profit on the manufacturers as well as for the wholesalers and retailers. Once the maximum price was printed on the package anybody charging even a paisa more should be subject to prosecution.

the matter was never placed back for deliberations to the representatives of the people. Dust had been dexterously swept to under the carpet evidently.

16. The additional counter affidavit disclosed that the Joint Secretary in charge of Legal Metrology in the Ministry of Civil Supplies Consumers Affairs and Public Distribution along with the Director of Legal Metrology were dealing with the Expert Committee report. After the submission of the Report, decision on continuing the practice of declaration of MRP inclusive of all taxes, was taken by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Government of India. Since the expert committee was appointed by the Ministry, the report was not placed before the Parliament, it is explained.

17. We find that the trust reposed in the Ministry by the Parliament practically stands forfeited. Not only that there was no proper recommendation, but the Committee had failed to appreciate the anxiety and the need with which such procedure had been conceived. Resultantly, we have to endorse the submissions made by the petitioner that there has been an unwholly effort to maintain the status quo as it was convenient to one section, and one sector alone.

18. We record our displeasure in the manner in which the recommendations have been modulated both in its scope and content. Due deliberations, which the issue deserved, had been denied to the subject. If the recommendations were presented for the consideration of the Parliament Committee, the persons responsible would have been taken to task for the haphazard work. Since the issue essentially relates to legislative functions to be attended to by the

Government, we refrain from issuing any positive directions. As the Committee had failed to discharge their duties, that had been expected of it, naturally the Government will have to get the fuller details from a reconstituted committee. Reasons given by the committee for not giving a final recommendation was unfortunate and we hope the new committee constituted would at least be definite in answering the terms of reference in precise and understandable language.

19. Consequently, the Government is directed hereby to constitute an Expert Committee forthwith, and in any case, within two months from the date of receipt of a copy of this judgment. Follow up actions are to be taken, as are expected of, also taking the Parliamentary Committee into confidence, when once report is tabled.

The writ petition is disposed of with the above directions. The petitioner will be entitled to costs, payable by the second respondent, which we quantify at Rs. 5000/-.

