

Case Note: Case concerning the question whether packaged drinking water excluded from the application of the provisions of the Prevention of Food Adulteration Act, 1954 by virtue of Section 2 (v) of the said Act. The Court held that Section 2 (v) does not exclude water which is meant for human consumption and since packaged drinking water is specifically available for human consumption it can be regulated under the Act.

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2002CriLJ4779, ILR2002KAR4791, 2003(1)KarLJ265

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Decided On: 29.08.2002

Cauvery Mineral Waters Private Limited

v.

Bureau of Indian Standards and Anr.

Hon'ble Judges:

Chandrashekaraiiah, J.

ORDER

Chandrashekaraiiah, J.

1. In all these petitions the petitioners have challenged the Notification Nos. GSR 759 and 760(E), dated 29-9-2000 issued by the Union of India introducing amendment to Rule 42 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "Rules 1955").

2. In one of the writ petitions the petitioner has sought for quashing of the communication in letter bearing No. MDBN/L-696380, dated 16-11-2001 issued by the Bureau of Indian Standards, New Delhi, under which the request for retaining the brand name 'Cauvery' has been rejected on the ground that it contravenes the clauses concerning labelling conditions as per IS : 14543 and the Prevention of Food Adulteration Act (hereinafter referred to as "Act 1954").

3. The case of the petitioners is that whether the Union of India is competent to frame rules regulating the sale of packaged drinking water since the word 'water' is excluded from the definition of the word 'food' under the Act 1954. It is the submission of the petitioners that the word 'food' defined under the Act excludes drugs and water and therefore, no rules can be framed regulating the sale of water under the Act 1954.

4. In reply to this submission the Union of India in its statement of objections has stated that the word 'water' as used in Section 2(v) of the Act 1954 has to be understood to refer to the word 'water' that is supplied by the public water supply establishment and it has no

application insofar as the packaged drinking water is concerned, since it is being used for human consumption, which is not excluded from the definition of the word 'water'. It is further stated that selling of packaged drinking water became widely prevalent and as there is an increasing demand for packaged drinking water, too many manufacturers have engaged themselves in the selling of packaged drinking water which has resulted in unhealthy competition in vending unsafe water causing detriment to the health of people at large. It is further stated that even in the Parliament several questions were raised complaining about the inaction on the part of the Government in not regulating the sale of packaged drinking water. The Union of India taking the above said facts into consideration has issued the notification introducing amendment to Rule 49 of the Rules 1955.

5. On these rival contentions the question that arises for consideration is whether the packaged drinking water is the same as used in Section 2(v) of the Act 1954 or not?

6. In order to consider the above said point it is just and necessary to refer to the amended rules with reference to Section 2(v) of the Act 1954.

The amended rules reads as follows.--

1. (1) These rules may be called the Prevention of Food Adulteration (7th Amendment) Rules, 2000.

(2) They shall come into force on 29th March, 2001.

2. In the Prevention of Food Adulteration Rules, 1955.--

(i) in Rule 42, in sub-rule (zzz), after Clause (13), the following clause shall be inserted, namely.--

"(14) Every package of drinking water shall carry the following declaration in capital letters having the size of each letter as prescribed in Rule 36:

PACKAGED DRINKING WATER";

(ii) in Rule 49, after sub-rule (27), the following sub-rule shall be inserted, namely.-- J

"(28) No person shall manufacture, sell or exhibit for sale packaged drinking water except under the Bureau of Indian Standards Certification Mark";

(iii) in Appendix 'B' after Item A. 32, the following item shall be inserted, namely.--

"A. 33 Packaged drinking water (other than mineral water).--"Packaged drinking water" means water derived from any source of potable water which is subjected to treatments, namely, decantation, filtration, combination of filtration, aerations, filtration with membrane filter, depth filter, cartridge filter, activated carbon filtration, demineralisation, remineralisation reverse osmosis and packed. It may be disinfected to a

level that will not lead to harmful contamination in the drinking water. It may be disinfected by means of chemical agents and/or physical method of the number of micro-organism to a level that does not compromise food safety or suitability.

It shall be packed in clean, sterile, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) conforming to IS : 10146 or polyvinyl chloride (PVC) conforming to IS : 10151 or polyalkylene terephthalate (PET or PBT) conforming to IS : 12252 or polypropylene conforming to IS: 10910 or foodgrade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.

All packaging materials of plastic origin shall pass the overall migration and colour migration limits as laid down in the relevant Indian Standards for products for respective packaging materials.

It shall conform to the following standards, namely.--

Sl. No.	Characteristics	Requirements
(1)	(2)	(3)
(1)	Colour	Not more than 2 Hazen Units/True Colour Units
(2)	Odour	Agreeable
(3)	Taste	Agreeable
(4)	Turbidity	Not more than 2 nephelo-metric turbidity unit (NTU)
(5)	Total Dissolved Solids	Not more than 500 mg/litre
(6)	pH	6.5 - 8.5
(7)	Nitrates (as NO ₃)	Not more than 45 mg/litre
(8)	Nitrites (as NO ₂)	Not more than 0.02 mg/litre
(9)	Sulphide (as H ₂ S)	Not more than 0.05 mg/litre
(10)	Mineral oil	Not more than 0.01 mg/litre
(11)	Phenolic compounds (as	Not more than 0.001

	C ₆ H ₅ OH)	mg/litre
(12)	Manganese (as Mn)	Not more than 0.1 mg/litre
(13)	Copper (as Cu)	Not more than 0.05 mg/litre
(14)	Zinc (as Zn)	Not more than 5 mg/litre
(15)	Fluoride (as F)	Not more than 1.0 mg/litre
(16)	Barium (as Ba)	Not more than 1.0 mg/litre
(17)	Antimony (as Sb)	Not more than 0.005 mg/litre
(18)	Nickel (as Ni)	Not more than 0.02 mg/litre
(19)	Borate (as B)	Not more than 5 mg/litre
(20)	Anionic surface active agents (as MBAS)	Not more than 0.2 mg/litre
(21)	Silver (as Ag)	Not more than 0.01 mg/litre
(22)	Chloride (as CD	Not more than 200 mg/litre
(23)	Sulphate (as SO(SIC))	-do-
(24)	Magnesium (as Mg)	Not more than 30 mg/litre
(25)	Calcium (as Ca)	Not more than 75 mg/litre
(26)	Sodium (as Na)	Not more than 200 mg/litre
(27)	Alkalinity (as HCO ₃)	-do-
(28)	Arsenic (as As)	Not more than 0.05 nig/litre
(29)	Cadmium (as Cd)	Not more than 0.01 mg/litre
(30)	Cyanide (as CN)	Not more than 0.05 mg/litre
(31)	Chromium (as Cr)	Not more than 0.05 mg/litre
(32)	Mercury (as Hg)	Not more than 0.001 mg/litre
(33)	Lead (as Pb)	Not more than 0.01

		mg/litre
(34)	Selenium (as Se)	-do-
(35)	Iron (as Fe)	Not more than 0.1 mg/litre
(36)	Polynuclear aromatic hydrocarbons	Not detectable
(37)	Polychlorinated biphenyle (PCB)	-do-
(38)	Aluminium (as Al)	Not more than 0.03 mg/litre
(39)	Residual free chlorine	Not more than 0.2 mg/litre
(40)	Pesticide residue	Below detectable limits
(41)	"Alpha" activity	Not more than 0.1 Becquerel/litre (Bq)
(42)	"Beta" activity	Not more than 1 Pico curie/litre (pCr)
(43)	Yeast and mould counts 1 x 250 ml.	Absent
(44)	Salmonella and Shigella 1 x 250 ml.	-do-
(45)	E. Coli or thermotolerant bacteria 1 x 250 ml.	-do-
(46)	Coliform bacteria 1 x 250 ml.	-do-
(47)	Faecal streptococci and staphylococcus aureus 1 x 250 ml.	-do-
(48)	Pseudomonas aeruginosa 1 x 250 ml.	-do-
(49)	Sulphite reducing anaerobes 1 x 250 ml.	-do-
(50)	Vibro cholerae and Vibro parahaemolyticus 1 x 250 ml.	-do-
(51)	Aerobic Microbial Count	The total viable colony count shall not exceed 100 per ml. a 20° C to 22° C in 72 h on agar-agar or on agargelatin mixture, and 20 per ml at 37°C in 24 h on agar-agar

Labelling Prohibitions:

No claims concerning medicinal (preventive, alleviative or curative) effects shall be made in respect of the properties of the product covered by the standard. Claims of other beneficial effects related to the health of the consumer shall not be made.

The name of the locality, hamlet or specified place may not form part of the trade name unless it refers to a packaged water collected at the place designated by that trade name.

The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition and properties of such waters put on sale is prohibited".

Section 2(v) of the Act 1954 reads as follows.--

"(v) "Food" means any article used as food or drink for human consumption other than drugs and water and includes.--

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food;

(b) any flavouring matter or condiments; and

(c) any other article which the Central Government may having regard to its use, nature, substance or quality, declare by notification in the Official Gazette, as food for the purposes of this Act".

From the reading of the definition of the word 'food' under the Act no doubt, drugs and water are excluded. But, at the same time, any article used as food or drink for human consumption is a food. Further, any article which ordinarily enters into or used in composition or preparation of human food is also a food. In 'The World Book Encyclopedia' it is stated that water is the most common substance on earth. It covers more than 70% of the earth's surface. It fills the oceans, rivers and lakes, and is in the ground and in the air we breathe. Water is everywhere. Out of total available 'water' on earth, only about 3% is fresh. About 3/4th of the fresh water is frozen in glaciers and icecaps. Glaciers and icecaps contain as much water as flows in all the earth's rivers in about 1,000 years. From this it is clear that, water pollution is one of our most serious environmental problems. Polluted water may look clean or dirty, but it contains germs, chemicals or other materials that can cause inconvenience, illness or death. Impurities must be removed before such water can be used safely for drinking, cooking, washing or laundering. Water pollution is a serious problem in these days. Therefore, keeping in view the present situation, it is just and necessary to understand the word 'food' as defined under the Act 1954.

7. The object of bringing the enactment i.e., the Act 1954 is to make provision for prevention of adulteration of food. As seen from the statement of objection on behalf of

the Union of India there were lot of complaints regarding the purity of water sold in the market which is meant for human consumption. As per the definition 'food' means any article used as food or drink for human consumption and any article which ordinarily enters into, or is used in the composition or preparation of, human food is also a 'food'. Keeping this in view can it be said that all water that is available on earth is excluded from the definition of the word 'food'? All water available on earth cannot be used for human consumption or it can't be used for preparation of human food. Whenever there is a doubt as to the meaning of a provision, it is just and necessary to look into the preamble in order to ascertain the intention of the Legislature. From the well-established rules of legislation of the statute, the preamble and title may legitimately be consulted to solve any ambiguity, or to fix the meaning of the word which may have more than one or to keep the effect of the Act within the real scope whenever the enacting part is in any of these respects open to doubt. If literal construction would defeat the obvious intention of the Legislature and produce a wholly unreasonable result, the Court must "do some violence to the words" and so achieve that obvious intention and produce a rational construction as held by the Court in the case of Ajit Investment Company Private Limited, Jamnagar, Gujarat and Anr. v. K.G. Malvadkar and Ors., AIR 1973 Bom. 285 Lord Denning in his book 'The Discipline of law' has stated that "whenever there is a choice, choose the meaning which accords with reasons and justice". It is further stated in the said book that whenever strict interpretation of statute gives rise to absurd and unjust situation, the Judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind. Keeping this in view the definition of the word 'food' defined under the Act is to be understood.

The Supreme Court in the case of Girdhari Lal and Sons v. Balbir Nath Mathur and Ors., [MANU/SC/0544/1986](#) has held as follows.--

"Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. . A Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of rinding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word, so as to give force and life to the intention of the Legislature. Put into homely metaphor, it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the contexture of it they would have straightened it out? He must then do what they would have done. A Judge should not alter the material of which the Act is woven, but he can and should iron out the creases".

8. The definition of the word 'food' no doubt excludes drugs and water, but it has to be understood that the word 'water' that has been excluded is not the water which has to be used for human consumption. The packaged drinking water is specially meant for human consumption and it is also used in the composition and preparation of food. Therefore,

whatever the article used as food or drink for human consumption is a 'food' as defined under the Act. Since the packaged drinking water is a drink for human consumption and also is being used in composition or preparation of human food not excluded from the definition and what has been excluded is the water which cannot be used for human consumption either as a drink or a food.

9. In India the main food of an Indian is rice and wheat and to use rice and wheat as food necessarily, water is to be used for preparation of human food. Therefore, as stated earlier the packaged drinking water which has been specially meant for human consumption cannot be said to be excluded from the definition of the word 'food'.

10. The Supreme Court in the case of Ichchapur Industrial Co-operative Society Limited v. Competent Authority, Oil and Natural Gas Commission and Anr., [MANU/SC/2097/1996](#) had an occasion to consider whether water is a mineral or not.

In the said decision the Supreme Court has held that water falls within the definition of mineral'. Under these circumstances I hold that the packaged drinking water is a food and it has not been excluded from the definition of water. If that is so, the Union of India may frame the rules regulating the sale of packaged drinking water and therefore, the impugned notification introducing the amendment to the rules is valid in law.

11. The learned Counsel for the petitioner nextly submitted that since the industry which produces packaged drinking water is not a schedule industry under the Industrial Development and Regulation Act and also under the Bureau of Indian Standards Act, 1986, the rule which provides for certification under the authorities constituted under the Bureau of Indian Standards Act is not correct. The industry in question which manufactures packaged drinking water is not a schedule industry under the above said enactments. But, the amended rules provide for certification regarding ISI mark and therefore, the certification if any is only under the amended rules and not under the above said enactments. Therefore, by reference to the above said enactments certification is required. If that is so, it cannot be said that there is no need for the petitioners to obtain certificate under the above said enactments.

12. The petitioner in W.P. No. 46709 of 2001 contends that the authorities are not right in preventing it from using the trade name as 'Kaveri'. From the pleading it is seen that the petitioner himself has converted the trade name into one of 'Auvery' in place of 'Kaveri'. If that is so, the authorities are right in rejecting his request to retain the old brand name which was discontinued by the petitioner himself. Further, the rule also prohibits the use of any statement or of any pictorial device which may create confusion in the mind of the public. The river Kaveri in Karnataka is considered as a sacred one like Ganga river. If that is so, there is scope for the public to get confused and they may resort to use the packaged drinking water thinking that it is the holy water of river Kaveri. If that is so, in view of the above said apprehension, the authorities are justified in preventing the petitioner from using the brand name 'Kaveri'.

The object of regulating the sale of packaged drinking water is with a view to prevent sale of contaminated/polluted water which is mainly responsible for damaging the health of the human being. Therefore, any potable water which is meant to be used for human consumption must conform to the standard specified on the basis of the scientific data. If that is so, in the interest of general public, that too in view of the fact that there are innumerable complaints regarding the quality of water sold in the packaged bottle and also in view of the fact that many of the representatives of the public raised several questions on the floor of the Parliament, it is just and necessary to regulate the sale of packaged drinking water in order to see that the standard is maintained.

For the reasons stated above, I pass the following order:

Writ petitions are dismissed. Rule is discharged.

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