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### LEGAL METROLOGY DEPARTMENT HAS NO POWERS TO IMPOSE RESTRICTIONS ON SALE OF UNPACKAGED FOOD ITEMS IN CINEMA HALLS, RULES HIGH COURT

6 September 2018

The Multiplex Association of India (MAI) and PVR Limited (PVR) (collectively, the Petitioners) challenged the following two orders issued by the Controller of Legal Metrology (Controller), an authority appointed under the Legal Metrology Act, 2009 (Act), in Writ Petition No. 27029 of 2018 before the High Court of Telangana and Andhra Pradesh at Hyderabad.

- Order No. 1033/T/2018, dated 17.07.2018 (First Order), issued under the Act, directed the cinema halls and multiplexes of Telangana to ensure that the vendors/shops situated in cinema theatres should indicate the net quantity of pre-packaged, as well as non-packaged products by affixing a sticker on the container and also showcase the same on the display board to indicate the weight, volume or measures. Additionally, a consumer helpline number should be displayed.
- Order No. 1033/T/2018, dated 20.07.2018 (Second Order), directed the enforcing authorities to hold meetings with the multiplex and theatre owners, explaining to them that food items and soft drinks, etc. (*unpacked and packaged*) should be sold by weight or volume which should be displayed on the display board along with relevant price. The Second Order further stated that the maximum retail price of the food item should be mandatorily printed on its container / package after 1 September 2018 before which it can be done by way of a sticker. Lastly, officers were directed to brief the owners to avoid keeping only one brand of bottled water and give options to the consumers.

First Order and Second Order are collectively referred to as the 'Orders'.

#### Submissions of the Petitioners

The Petitioners raised the following contentions:

- (a) While the Rules require declaration of price, weight, etc. of a pre-packaged commodity and prohibit any retailer from selling any pre-packaged commodity unless it complies with the Act and the Rules, unpackaged food items (such as popcorn, samosas, nachos, sandwiches, burgers, vada pao, beverages and soft drinks which are sold in plastic glasses through fountains), unlike pre-packaged items (such as beverage cans, packaged chips, juice

bottles, etc.), are not subject to the Legal Metrology (Packaged Commodities) Rules, 2011 (Rules).

- (b) The Controller could not disregard the provisions of the Act and Rules which apply only to pre-packaged commodities, and in doing so, compel the Petitioners to follow the Orders issued in respect of unpackaged commodities also.
- (c) Unpackaged food items were being sold with proper receipt/invoices and the rate list was being displayed on the board in a proper manner.
- (d) An order dated 25.03.2014 was issued by the Ministry of Consumer Affairs, Government of India, which had excluded 'open and unpacked items' sold by a particular multiplex chain, PVR, from the purview of the Act as they are covered in the exemption provided under Rule 26 of the Rules.
- (e) The Orders had not been notified as per the requirement of Rule 30 of the State Legal Metrology (Enforcement) Rules, 2011 (State Rules).
- (f) Further, the Second Order directing the owners to avoid keeping only one brand of water, etc., and giving options to the consumers was beyond the jurisdiction of the Controller; and in apparent conflict with the fundamental right of the members of MAI and PVR to carry on trade and business guaranteed by Article 19(1)(g) of the Constitution of India.

#### Submissions of the Controller

The Controller raised the following contentions:

- (a) The impugned Orders were issued covering both unpackaged and packaged commodities, and that they are well within the ambit of the powers and provisions of the Act and the Rules made under it, especially Rule 26.
- (b) Under a government order (Ref: G.O.M. No.9), the Legal Metrology Department had been designated as agents to take up activity relating to consumer affairs under the Consumer Protection Act, 1986, and to register cases to curb unfair or restrictive trade practices. Since the members of MAI were carrying on business by selling unpackaged items without declaring the actual weight or measure of the commodity contained in the container, it became necessary to safeguard the interests of the consumers.
- (c) The exemption order of the Ministry of Consumer Affairs is *merely clarificatory* in nature, and that it would not operate to exempt unpackaged items from the purview of the Act.
- (d) The requirement of issuing any notification does not exist under Rule 30 of the State Rules, since the provisions of the Act have been reiterated in the Controller's Orders.

#### Judgement

The Court held that the orders issued by the Controller were ultra vires of his powers under the Act and the Rules, and clearly a colourable exercise of power. The Court

examined the definition of pre-packaged commodity in Section 2(1) of the Act and held that the same necessarily excludes items sold in an unpackaged form.

With respect to the Controller's contention regarding G.O.M No. 9, the Court held that the said government order refers to demand of service charges in lieu of tips by certain hotels and restaurants in the State of Telangana as a compulsory charge apart from the service tax and is therefore confined to *preventing restrictive trade practice of restaurants and hotels collecting compulsory service charge in addition to service tax, and not to anything else.*

The Court therefore held that it is beyond jurisdiction of the Controller to not only insist on affixture of sticker on non-packaged food items indicating net quantity, MRP and consumer helpline details, but also to issue a direction that owners to avoid keeping only one brand of water, etc., and give options to the consumer.

The Court, however, directed the members of MAI and PVR to display prominently at the points of sale of the non-packaged commodities – on the menu boards; *the price per standard unit of weight or measures or numerals or multiples thereof*, and also display or indicate the details of the commodity, net weight or measure or numerals as per the prescribed standard unit along with the rate at which it is sold, in the sales invoice or bill.

### Comment

The order of the Court, as well as the interpretation of provisions of the Act and the Rules, are likely to not only benefit multiplex cinema operators, but also other businesses which sell unpackaged food items against any possible action by the legal metrology department on similar lines. It is also noteworthy that the Court upheld the proposition of law that the Government and its officers cannot go beyond its jurisdiction and interfere with the fundamental right to carry on trade or business guaranteed by the Constitution of India.

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