

(2013) 01 KAR CK 0063

Karnataka High Court

Case No: Writ Petition No. 39175/2012 (GM-RES)

Cadbury India Ltd.

APPELLANT

Vs

Controller of Legal Metrology
and The Inspector Department
of Legal Metrology

RESPONDENT

Date of Decision: Jan. 16, 2013

Citation: AIR 2013 Kar 108 : (2013) ILR (Kar) 879 : (2013) 5 KarLJ 391 : (2013) 2 KCCR 1574

Hon'ble Judges: Dilip B. Bhosale, J

Bench: Single Bench

Judgement

Dilip B. Bhosale, J.

Rule. By consent of learned counsel for the parties, heard forthwith. The petitioner-company is a manufacturer of chocolates. Respondent No. 1 is the controller of legal metrology appointed u/s 14 of the Legal Metrology Act, 2009 (for short "the Act") and the appellate authority u/s 50 thereof. Respondent No. 2 is the Legal Metrology officer, duly appointed u/s 13 of the Act.

2. Respondent No. 2 issued a notice/letter dated 15.12.2011 to the petitioner-company u/s 11 r/w 29 of the Act stating that they have violated Section 11 by using the expression "angula" in their "5 star" chocolate advertisement. The expression "angula" means, "an inch", and that being a non metric system of length, they allegedly violated the provisions contained in Section 11(1)(c) of the Act. The text of the notice dated 15.12.11 issued by respondent No. 2 reads thus;

Sub: violation of Legal Metrology Act, 2009 Ref: Your T.V. Advertisement.

With reference to the above, it is found that, in 5 star chocolate advertisement, the person who goes to a tailor and order him to shorten his father's pant. In this advertisement, in kannada version, he says to cut one "angula" (an inch) which is a non-metric system of length. It is a clear violation of Section 11(1c) r/w 29. Hence, a case is booked under this violation, whereas the above case is compoundable u/s 48

of Legal Metrology Act, 2009. You are hereby directed to appear in person or through nominated person before the compounding authority.

3. In the subject advertisement for "5 star" chocolate, two brothers - Ramesh and Suresh visit the shop of a tailor seeking to have a trouser of their father shortened. One of the brothers requests the tailor to reduce length of the trouser by one "angula". "Angula" in Kannada language means "an inch". The brothers then have a bite of "5 star" chocolate bar and forgets the instruction given to the tailor and once again instruct him to reduce the length by an inch. This goes on until the length of the trouser reduces to the size of a "nicker". In the advertisement, the petitioners have endeavored to show as to how a person who eats "5 star" chocolate forgets everything around him. The advertisement is not of the trouser but of their "5 star" chocolate, and the word used "angula" is not in relation to the chocolate, which is a subject matter of the advertisement. In other words, there is no reference in the advertisement to the size, weight or length of the "5 star" chocolate bar.

4. From very nature of the advertisement, it is clear that apart from it being humorous, by using the expression "angula", in respect of the trouser, the petitioners have tried to emphasize that after having a bite of their "5 star" chocolates, one forgets everything around him. Moreover, use of non-metric system of length in the advertisement has nothing to do with the chocolate, which is a product of the petitioner and which is being advertised. The advertisement is fictional and is made humorous, creating an antiquity sense by using out-of-date language.

5. It is against this back drop, the appellate authority in the appeal filed by the petitioner u/s 50 of the Act, after considering the arguments advanced on behalf of both sides, and so also the provisions contained in Sections 10, 11 and 12 of the Act, held thus;

Looking at the Section 10, 11 & 12 of the Legal Metrology Act, 2009, it is evident that any custom, usage, practice or method adopted in any transaction, dealing or contract in respect of any goods or undertakings has to be METRIC SYSTEM. In present case, the T.V. advertisement for Five Star Chocolate Bar of Appellants Company cannot use British system to promote or advertise their products to the public. The use of word "Angula" (an inch) definitely against the Section 10, 11 & 12 of the Act and the respondent has rightly issued the notice dated 15.12.2011, 16.01-2012, 22-02-2012 and 16-03-2012 for violation as mentioned in the said notice. Hence the

ORDER

Under Section 28 & 29 of the Legal Metrology Act, 2009 the Appellant Company is directed to pay the penalty of Ten Thousand Rupees for advertisement in British system, which is non standard units in India. The respondent is directed to collect the penalty from the appellant company and credit the same to the Government.

Appeal dismissed.

6. I have heard learned counsel for the parties and with their assistance, gone through the entire materials produced before the Court and the relevant provisions of the Act. Mr. Dhyan Chinnapa - learned counsel for the petitioner after having invited my attention to the provisions of the Act, in particular section 11, submitted that the provisions contained in this section make it clear that the goods which are the subject matter of an advertisement, should not be advertised in any manner otherwise than in accordance with standard unit of weight, measure or numeration. He submitted merely because in the advertisement a non-metric expression is used that does not mean, the use of such expression would fall within the mischief of section 11 of the Act. Section 11 will have application only in the event the goods/commodities which are subject matter of an advertisement are published/advertised otherwise than in accordance with the standard unit of weight or measure or numeration. While introducing section 11 it was intended that a customer is not misled in any manner in the matter of understanding an advertisement of the goods/commodity to be advertised. He therefore, submitted that the subject advertisement and the use of non-metric system, in the course thereof would not amount to violation of section 11 of the Act. He then submitted that the subject advertisement is of the chocolate and not of the trouser. In other words, he submitted that the chocolate cannot be measured in length, and therefore, the use of an expression "angula", cannot be termed as the expression in relation to their product.

7. On the other hand, learned counsel for the respondents submitted that Section 11 of the Act provides that, no person, in relation to any goods, things or service, prepare or publish any advertisement, poster or other document, otherwise than in accordance with the standard unit of weight, measure or numeration. He submitted that the expression "things" used in Section 11 covers the trouser also in the advertisement and since the expression "angula" violates Section 11 of the Act, the impugned action is justified.

8. In India, uniform standard of weights and measures based on the metric system, were established in the year 1956, which were revised in the year 1976 with a view to give effect to the international system of units. Apart from it, the Standards of Weights and Measures Act, 1976 was brought into force for establishing standards of weights and measures, regulation of inter-State trade or commerce in weights and measures and other goods which are sold by weight, measure or number. In the year 1985, the Standards of Weights and Measures (Enforcement) Act, 1985 was enacted for enforcement of standards of weights and measures established by or under the 1976 Act. Due to technological advancement, it became necessary to review these enactments and to get rid of anomalies as well as to keep the regulations pragmatic to the extent required for protecting the interest of consumers, the Legal Metrology Act, 2004 brought into force on 01.04.2011. The

advancement of technology necessitated the review of the above mentioned enactments to make them simple, eliminate obsolete regulations, ensure accountability and bring transparency. It also become necessary to keep the regulation pragmatic to the extent required for protecting the interest of consumers and at the same time, keep the industry free from undue interference. In short, as indicated in the statement of objects and reasons, the Act has been introduced to establish and enforce the Standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto. The Act came into force on 01.04.2011 vide S.O. 210 (E) dated 31st January, 2011.

9. It would be advantageous to have a glance at the relevant provisions to understand the controversy and to address the issue/question raised in the petition. Chapter-II of the Act deals with Standard Weights and Measures consisting of Sections 4 to 12. Section 4 provides for units of weights and measures which is based on metric system. Every unit of weight or measure under this provision should be in accordance with the metric system based on the international system of units. Section 5 insofar as the present writ petition is concerned, provides that the base unit of length shall be the meter, whereas the mass shall be the kilogram. Section 6 provides for base unit of numeration. Section 7 deals with standard units of weights and measures. u/s 8, no weight, measure and numeral. Under this provision, no weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral. Section 9 provides for reference, secondary and working standards of weights and measures. u/s 10 any transaction, dealing or contract in respect of any goods, class of goods or undertakings shall be made by such weight, measure or number as may be prescribed.

10. Section 11, under which the impugned action has been taken, provides for Prohibition of quotation etc., otherwise than in terms of standard units of weight, measure or numeration. Since the arguments advanced by learned counsel for the parties were centered around clause (c) of sub-section (1) of Section 11 of the Act, it would be relevant to reproduce the said Section, which reads thus:

11. Prohibition of quotation, etc., otherwise than in terms of standard units of weight, measure or numeration.- (1) No person shall, in relation to any goods, things or service,-

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(c) prepare or publish any advertisement, poster or other document, or

(d) xxxxxxxxxxxxxx

(e) xxxxxxxxxxxxxxxx

otherwise than in accordance with the standard unit of weight, measure or numeration.

(2) The provision of sub-section (1) shall not be applicable for export of any goods, things or service.

11. From bare perusal of Section 11, insofar as the instant writ petition is concerned, it appears to me that no person shall in relation to any goods, things or service, prepare or publish any advertisement, poster or other document, otherwise than in accordance with the standard unit of weight, measure or numeration. Section 29 of the Act provides that whoever violates Section 11 shall be punished with fine and for second and subsequent offence, with imprisonment for the term which may extend to one year, or with fine, or with both.

12. In my opinion, the action contemplated by Section 29 of the Act would stand attracted or can be taken only when a person, in relation to any goods/commodities, prepare or publish any advertisement otherwise than in accordance with the standard unit of weight, measure or numeration. The expression "in relation to any goods, things or service" in Section 11 of the Act means, preparation or publication of any advertisement, poster or other document if the goods, things or service to be advertised or in respect of which any poster or other document is prepared and published. The words "advertisement, poster or document", would mean, if the goods/commodities or things manufactured or service rendered to be advertised or printed on poster or document. The mere fact that in an advertisement a non-metric expression is appearing which has nothing to do with the subject matter of the advertisement would not fall within the mischief of section 11 of the Act. In the present case, the reference to "angula" (an inch) is in relation to the trouser which is not the subject matter of the advertisement or product of the petitioner. If the contents of the advertisement are seen carefully, it cannot be stated that the customers would get misled or would take/understand the word "angula" in relation to "5 star" chocolate. In my opinion, customer would not get misled in any manner in understanding the advertisement of "5 star" chocolate. The expression in relation to "any goods, things or service" will have to be read in the context of the goods/commodity being advertised. If the provisions contain in Section 11 are read with the other provisions in Chapter-II and so also the statement of objects and reasons, it would be clear that the expression "goods, things or service" used therein would mean the goods and things manufactured or service to be rendered by the persons advertising the goods, things or services.

13. If the advertisement is of a particular goods/thing such as in the present case, in relation thereto, no person should publish or use in the advertisement, the expressions otherwise than in accordance with the standard unit of weight, measure or numeration. The use of the word "angula" in the present case, which

means "an inch", not in relation to "5 star" chocolate which was advertised by the petitioners. More over, the use of the word "angula", in a humorous form, is easy to understand when it comes to a common man and the use thereof, as observed earlier, was only to convey to the customers that their chocolate is so tasty and delicious, after having its bite, one forgets everything. The advertisement was of the chocolate and not of any other commodity/goods and they have made it humorous. It is not even an allegation that the use of word "angula" (an inch) in the advertisement by the petitioner is in relation to "5 star" chocolate which can be measured in weight and not in length.

14. The Kerala High Court had an occasion to deal with similar question under the provisions of the old Act namely the Standards of Weights and Measures (Enforcement) Act, 1985, in [Mother Superior, Little Flower Convent Vs. Vicar, St. Marys Church and Others,](#) . In that case, the company was engaged in manufacturing and marketing of motor vehicles under a general brand name "Mahindra". In their advertisement, the engine of the vehicle was described as having 109 BHP (British Horse Power). Hence, the notice was issued and similar order as has been passed in the present case was passed. The Kerala High Court, after dealing with all the provisions of 1985 Act, held that mention of BHP in the advertisement made by the petitioners in respect of the vehicle manufactured by them does not constitute any violation of the provisions of the Standards of Weights and Measures (Enforcement) Act, 1976 or of 1985 and accordingly quashed the notices. Thus, in my opinion, the impugned action and so also the order passed by the appellate authority cannot be sustained in law and deserve to be set aside. Ordered accordingly. The Rule is made absolute in terms of this order. No costs.