

# **Yum Restaurants India Private Ltd. ... vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 6 March, 2024**

**Author: Rajeev Singh**

**Bench: Rajeev Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2024:AHC-LK0:20269

Reserved on:- 21.12.2023

Pronounced on:- 06.03.2024

Court No. - 13

Case :- APPLICATION U/S 482 No. - 11831 of 2023

Applicant :- Yum Restaurants India Private Ltd. Thru. Its Authorized Signatory Mr. Sayan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Siddhartha Sinha,Alok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard Mr. Siddhartha Sinha alongwith Mr. Alok Kumar Singh, learned counsel for the applicant as well as Dr. V.K. Singh, learned Government Advocate assisted by Mr. Nikhil Singh, learned A.G.A., and Mr. Hemadri Singh, Senior Inspector Legal Metrology, Mahanagar, Lucknow and perused the record.

2. By means of present application, applicant has sought following reliefs:

"(i) To quash the impugned summoning order dated 27.09.2023 passed by learned Additional Chief Judicial Magistrate-1, Court No. 25, Lucknow in Complaint Case No. 120000/2023 (State vs. Yum Restaurants (India) Private Limited and others) against the applicant and six of its Directors, thereby summoning them as accused under Section 36(1) of the L.M. Act r/w Rule 6(10) of the P.C. Rules.

(ii) To quash the impugned aforesaid complaint, i.e., Complaint Case No. 120000/2023 and entire proceedings thereof."

3. Learned counsel for the applicant submitted that applicant was a company registered under the Companies Act, 1956 which was operating and managing the fast-food restaurants under the brands, namely, "K.F.C.", "Piza Hut" and "Taco Bell" either itself or through its franchisees.

4. Learned counsel for the applicant further submitted that on 03.07.2022, respondent no. 2 apparently came across the website of "K.F.C. India" and noticed few alleged violations of Legal Metrology Act, 2009 (hereinafter referred as the "L.M. Act") read with Rule 6 (10) of Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred as the "P.C. Rules").

5. Learned counsel for the applicant further submitted that show cause notice bearing No. 475 dated 24.08.2022 was issued to applicant by respondent no. 2 stating therein that company violated the provisions of Section 18 of L.M. Act read with Rule 6(10) of P.C. Rules while selling 'Beverages Pepsi Pet' (pepsi cold drink in a plastic bottle), and the said violation was punishable U/s 28, 29, 36(1) of the L.M. Act.

6. Learned counsel for the applicant further submitted that in compliance of the aforesaid show cause notice, applicant submitted a response on 08.09.2022 through its Chief Legal Officer, by which it was clarified that all restaurants were exempted from using/displaying of the measurements for food served at their premises as provided under Rules 26(b) of the P.C. Rules. It has further been submitted that Department of Consumer Affairs vide its letter dated 15.09.2015 bearing No. WM-10(37)/2015 clarified that packages containing food items which was being packed by restaurants or hotels should be subjected to exemptions as provided under Rule 26(b) of P.C. Rules.

7. Learned counsel for the applicant further submitted that respondent no. 2 issued another notice dated 10.11.2022 to applicant by stating therein that aforesaid response of applicant was rejected and a formal case was registered U/s 18/36(1) of the L.M. Act read with Rule 6(10) of P.C. Rules. It was further mentioned in the said notice that the alleged offense was compoundable U/s 48 of the L.M. Act and if offense was not compounded, appropriate proceedings should be initiated against the applicant and its "Nominated Directors".

8. In support of his submissions, learned counsel for the applicant referred to and relied upon the decision of Hon'ble Apex Court passed in the case of Federation of Hotel and Restaurant

Associations of India vs. Union of India (UOI) and others reported in (2018) 2 SCC 97. It has further been submitted that learned Additional Chief Judicial Magistrate took cognizance in the most mechanical manner and failed to appreciate the provisions of Section 18 of L.M. Act read with Rule 6(10) of P.C. Rules in correct perspective.

9. Learned counsel for the applicant further submitted that respondent no. 2 did not have the authority to initiate criminal proceedings against the applicant and its directors, as the respondent no. 2, without scribing any reasons or demonstrating application of any sort of mind necessarily required while invoking of penal provisions. It has further been submitted that the main Section 89 of Food Safety and Standards Act, 2006 clearly gives overriding effect to the provisions of the F.S.S.A. over any other law in so far as the law applies to the aspects of food in the field covered by the F.S.S.A.

10. Learned counsel for the applicant further relied on the decision of Hon'ble Apex Court passed in the case of GHCL Employees Stock Option Trust vs. India Infoline Ltd. reported in (2013) 4 SCC 505 and submitted that learned Magistrate failed to pose unto himself the correct question viz., as if the complaint taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence.

11. Relying on the decision of Hon'ble Apex Court passed in the case of Sunil Bharti Mittal vs. C.B.I. reported in (2015) 4 SCC 609, further submission of learned counsel for the applicant is that in a complaint case, it is the duty of the trial court to satisfy itself and satisfaction must be reflected from its order. It has, thus, been submitted that indulgence of this Court is required.

12. Learned A.G.A vehemently opposed the prayer of applicant. He submitted that as per the provisions of Rule 6(10) of P.C. Rules, it was obligatory on the part of applicant to display the details of packed product; as in the present case, 'Beverages Pepsi Pet' (pepsi cold drink in a plastic bottle) was already a packed product, but its quantity was not mentioned on the digital platform.

13. Drawing attention of this Court on the counter affidavit, learned A.G.A. informed that now, the aforesaid error has been corrected by the applicant on its website, as a result, the quantity as well as the price has been mentioned/displayed, but prior to the said correction, offense was committed regarding violation of aforesaid rules/act, therefore, there was no illegality in the order passed by learned trial court. Learned A.G.A. also submitted that the exemption claimed by applicant was not applicable in the present case, hence, the present application was liable to be dismissed.

14. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application, F.I.R., impugned order, counter affidavit as well as other relevant documents; it is evident that exemption clause of Rule 26 of P.C. Rules is not applicable in the present case because 'beverages pepsi pet' is not being packed in the kitchen of the applicant but it is already a packed product manufactured by any other company, hence, clarification of Department of Consumer Affairs dated 15.09.2015 is also not applicable.

The judgement relied by learned counsel for the applicant in the case of Federation of Hotel and Restaurant Associations of India vs. Union of India (UOI) and others (supra) contains different facts as in the said case, the amount charged was higher than the printed M.R.P. on packaging during service provided to customers in the hotels and restaurants, as regards the proceeding was initiated for excess charges. Hon'ble Apex Court observed that in such case, the proceeding under the provisions of Legal Metrology Act, 2009 is not permissible. In case any excess amount has been charged, then it may be a case of consumer dispute which comes under the provisions of Consumer Protection Act, 2019.

It is undisputed fact that the product which was prepared and packed in the restaurants of the applicant-company and the packed product which was manufactured by other companies are being sold out through e-commerce. It was obligatory on the part of applicant to comply Rule 6 (10) of Legal Metrology (Packaged Commodities) Rules, 2011 by giving details of the quantity as well as M.R.P. of the product which is not packed in the kitchen, therefore, the argument advanced by learned counsel for the applicant has no force about the fact that applicant is exempted.

It is also evident from Annexure No. 5 of the counter affidavit, which is a notification dated 11.08.2011 issued by State Government U/s 14(1) of Legal Metrology Act, 2009 that Senior Inspector of Legal metrology is authorized to initiate proceeding. In the instant case, the proceeding has been initiated by Senior Inspector, Legal Metrology concerned, thus, this Court is of the view that there is no illegality in the order passed by the trial court.

15. With the above observations, the instant application is misconceived and accordingly stands dismissed.

Order Date :- 6th March, 2024 Arpan