

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14539 OF 2015

NESTLE INDIA LTD

Appellant(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

O R D E R

This appeal arises from the interim orders dated 9 December 2015 and 10 December 2015 of the National Consumer Disputes Redressal Commission ("NCDRC").

By the first of the above orders, the NCDRC issued the following interim directions for sampling the product "MAGGI Noodles" in nine variants for testing with reference to the quantity of lead and Mono Sodium Glutamate (MSG).

The operative portion reads as follows:-

"i) Shri L.N. Arora, an officer of this Commission, shall on 14th December 2015, at 11:00 am, open the cartons containing the packs, the batch numbers and date of manufacture from which were noted by the Local Commissioner Shri S. Hanumantha Rao and shall randomly pick up (i) one pack bearing March 15/D (ii) one pack bearing April 15/D (iii) one pack bearing May 15/D (iv) one pack bearing 04.2015/H (v) one pack bearing 03.2015/H (vi) one pack bearing Feb. 2015, (vii) one pack bearing Feb. 15/D and (viii) one pack bearing 05.05.2015/B as the date of manufacture. He will also pick up the packs bearing Feb. 15/A, March 15/A, 11.03.2015, 02.04.2015/B, 05.02.2015, March 15, 03.04.2015/B and May 2015/G as the date of manufacture. He will thus pick up 16 packs in all, out of the packs from which batch number and date of manufacture were noted by the Local Commissioner Mr. Rao.

ii) The packs picked up by the officer of this Commissioner shall be kept by him in a clean and dry box which shall be signed by him as well as the parties present at the time of his visit and then kept in a container which will be duly packed by him and also signed by him as well as the parties present at the time of his visit. He will carry a seal of this Commission and seal the box as well as the container with the said seal. The samples shall thus stand duly sealed and authenticated.

iii) The officer of this Commission shall also prepare a forwarding letter addressed to the Director of Export Inspection Agency, Mumbai, duly sign the same and obtain specimen signatures of the parties present at the time of his visit on the aforesaid forwarding letter, requesting him to get the aforesaid 16 samples tested and analyzed in terms of this order, within two weeks from the receipt.

iv) The officer of the Commissioner shall then carry the carton containing the box of samples to Export Inspection Agency, Mumbai alongwith the forwarding letter prepared by him and signed by the parties present at the time of his visit and deposit the said samples with the laboratory alongwith the forwarding letter, under due acknowledgement. The forwarding letter will also contain the request to the Director, Export Inspection Agency, Mumbai to compare and tally the signatures on the carton and the box containing samples with the signatures on the forwarding letter, and to carry out analysis in terms of this order, only if the signatures on the forwarding letter match with the signatures on the box and the carton.

v) Export Inspection Agency, Mumbai shall test and analysis the samples deposited by the officer of this Commission within two weeks of receiving the said samples and report the quantity if any of the Lead and MSG found in the Maggi noodles and/or the tastemaker kept in a small sachet, inside the pack of Maggi noodles and send its report to this Commission at the earliest.

vi) The officer shall get the entire proceedings videographed with the help of a Videographer to be arranged by the complainant. He shall prepare his report on the spot, obtain signatures of the parties present on the spot at the time of inspection on those proceedings and file the same along with his report. The officer shall be paid such fee as may be fixed by this Commission, after hearing the learned Additional Solicitor General. All the expenses to be incurred by the officer for compliance of this order including his boarding, lodging and transportation shall be borne by the complainant."

Subsequently by its order dated 10 December 2015, NCDRC issued further directions. Aggrieved by these directions, the present appeal was moved before this Court.

Initially by an order dated 16 December 2015, directions were issued to the effect that the samples which had been collected by the Local Commissioner appointed by the NCDRC would be sent to the Mysore Laboratory of CFTRI for testing.

The order dated 16 December 2015 is extracted for convenience of reference:-

"Issue notice.

As Mr. Mukul Rohtagi, learned Attorney General for India has entered appearance along with Ms. Anil Katiyar, learned counsel on behalf of the Union of India, they waive notice.

Heard Mr. Harish Salve and Mr. Nageshwar Rao, learned senior counsel for the appellant and Mr. Mukul Rohtagi, learned Attorney General for the respondent.

The present appeal is directed against the orders dated 9th and 10th December, 2015 passed by the National Consumer Disputes Redressal Commission, New Delhi. Grievance, as agoniously pyramided by Mr. Salve, learned

senior counsel, is that once the Commission has directed to send the product for testing to the laboratory at Mysore vide order dated 15.10.2015, there was no necessity or warrant to issue a further direction as per orders dated 9th and 10th December, 2015 for sending the samples to Chennai. It is urged by him that the laboratory at Chennai is not fully equipped to carry out all the tests required for the product, namely 'Maggi Noodles'.

Mr. Mukul Rohtagi, learned Attorney General, resisting the aforesaid submissions, would contend that on consent being given by the appellant, the product has to be sent to Chennai in place of Mumbai.

In course of hearing, learned counsel for the parties, very fairly, agreed that the primary concern is health and the test has to meet the parameters of Food Safety and Standards Act, 2006. In course of the debate, a consensus was arrived at that the laboratory at Mysore is absolutely well equipped and of being a referral and notified laboratory, the product should be sent there for testing. Be it noted that this statement has been made by Mr. Salve, learned senior counsel appearing for the petitioner.

Be that it may. Regard being had to the aforesaid concession, it is directed that the samples earlier collected by the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi, shall be sent to the Mysore laboratory for testing. The test reports shall be produced before this Court.

During the pendency of this appeal, the National Consumer Disputes Redressal Commission, New Delhi shall not proceed with the cases pending before it.

Let this appeal be listed along with SLP (C) No.33251 of 2015 on 13.01.2016."

Subsequently, a letter was received from CFTRI, Mysore.

Upon perusing the letter and the test report, this Court

issued the following directions on 13 January 2016:

"We have perused the test report. We would like the competent authority of CSIR - Central Food Technological Research Institute, Mysore, Karnataka, to apprise this Court with regard to two aspects, namely, whether the results of the test report relating to lead and glutamic acid, are within permissible parameters or not. The Institute at Mysore shall also clarify whether the test relating to glutamic acid includes the test pertaining to Mono-Sodium Glutamate (MSG).

Additionally, if the Institute feels that more samples are necessary for the carrying out of these two tests, it may communicate to Mr. S. Hanumantha Rao, Joint CA 14539/15 5 Registrar, N.C.D.R.C., the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi, who shall collect the samples from the godown of Food Safety and Standards Authority of India (FSSAI) at Lucknow, in the presence of both the parties and send it to the Institute at Mysore. The entire exercise shall be carried out within eight weeks from today."

In pursuance of the above directions, on 5 April 2016 this Court recorded that the Report from CFTRI, Mysore is received. Copies of the Report have been made available to the learned counsel appearing on behalf of the parties. The Court directed that the memory card which was received would be placed in safe custody.

The matter has rested there.

The bone of contention in the present appeal is the correctness of the interim directions issued by the NCDRC on 9 December 2015 and 10 December 2015. In view of the interim directions that were issued by this Court, sampling and testing

has been carried out under the auspices of CFTRI, Mysore.

During the course of the hearing, Mr. Vikramjit Banerjee, learned Additional Solicitor General has submitted that the Union of India would have no objection if the Report which has been received from CFTRI, Mysore is placed before the NCDRC, to form the basis of adjudication of the complaint.

The Report which has been received from CFTRI should be duly evaluated by the NCDRC in the complaint pending at the behest of the Union of India. Since the complaint is pending, it would be inappropriate for this Court to preempt the exercise of jurisdiction by the NCDRC which is vested adjudicatory authority under the Consumer Protection Act, 1986.

Hence, we set aside the impugned interim directions of the NCDRC dated 9 December 2015 and 10 December 2015 and direct that the NCDRC would be at liberty to proceed further by evaluating the report which has been obtained in pursuance of the interim order which was passed by this Court.

The appeal is, accordingly, disposed of. No costs. All the rights and contentions of the parties are kept open.

Pending application(s), if any, shall also stand disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI,
January 3, 2019

ITEM NO.45

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 14539/2015

NESTLE INDIA LTD

Appellant(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(IA NO. 1/2015)

WITH

SLP(C) No. 33251/2015 (IX)

Date : 03-01-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTACounsel for the parties:-Dr. A.M. Singhvi, Sr. Adv.
Mr. Arvind Datar, Sr. Adv.
Mr. Rajesh Batra, Adv.
Ms. Smarika Singh, Adv.
Mr. Saipur Faridi, Adv.
Mr. Rohit Chandra, Adv.
Mr. Amit Bhandari, Adv.
Mr. S. S. Shroff, AORMr. Colin Gonsalves, Sr. Adv.
Ms. Olivia Bang, Adv.
Mr. Satya Mitra, AORMr. Mehmood Pracha, Adv.
Mr. R.H.A. Sikander, Adv.
Mr. Mansoor Ali, AOR

Mr. S. S. Shroff, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR
Ms. Deepa M. Kulkarni, Adv.
Mr. Anoop Kandari, Adv.

Mr. Vikramjit Banerjee, ASG
Ms. Vibha Dutta Makhija, Sr. Adv.
Mr. Kiran Suri, Sr. Adv.
Mr. S.A. Haseeb, Adv.
Mr. Ajay Singh, Adv.
Mr. Anindia Barman, Adv.
Ms. Shruti Agarwal, Adv.
Mr. Raj Bahadur, Adv.
Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following
O R D E R

C.A. No. 14539/2015

The civil appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

SLP(C) No. 33251/2015

List on 25.1.2019.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)