

**IN THE HIGH COURT FOR THE STATES OF PUNJAB  
AND HARYANA AT CHANDIGARH.**

CWP No. 22996 of 2012. [O&M]  
Date of Decision: 20<sup>th</sup> December, 2012.

M/s FMI Ltd. & Anr.

Petitioners through  
Mr. Yash Raj Deora, Advocate

Versus

Union of India & Ors.

Respondents.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE R.P.NAGRATH**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

**SURYA KANT, J.**

(1) The prayer in this petition is to strike down Section 33 of the Legal Metrology Act, 2009 to the extent it prescribes imposition of penalty for the use of unverified weight or measure on the seller, distributor or the person who delivers or otherwise transfers, as according to the petitioner, the aforesaid provision *ultra-vires* Articles 14, 19 and 21 of the Constitution of India. The petitioners also seek quashing of the condition mentioned in Form LM-3 [Annexure P-8] requiring a manufacturer to have the goods verified and stamped meant for use within the State, besides a prayer to set aside the letter dated 31.05.2012 [Annexure P-14], said to have been issued in violation of Section 24 of the Legal Metrology Act, 2009.

(2) Petitioner No. 1 is a Company incorporated under the Companies Act, 1956, while the second petitioner is one of its Directors. The petitioner Company has set up an industrial unit for manufacturing 'Measuring Tapes'. The petitioners are said to have been directly affected

by Section 33 of the Legal Metrology Act, 2009 [for short 'the Act'], hence they question its constitutionality on the anvil of Articles 14, 19 and 21 of the Constitution.

(3) The Statement of Objections and Reasons of the Act placed on record by the petitioners [Annexure P-4A] reveals that India is signatory to the Metre Convention and is a member of General Conference of Weights and Measures ['CGPM'] as also the International Organization of Legal Metrology ['OIML']. Since CGPM have revised the standards of weight and measures and corresponding changes in law have been suggested by the OIML, that the Central Government constituted a Committee comprising technical and statistical experts. The Committee recommended for establishment of Standards of Weights and Measures of SI units and numeration based on international form of Indian Numerals. To give effect to those recommendations and with an object to regulate inter-State trade and commerce in weights and measures and the commodities sold, distributed or supplied, that the Parliament enacted the Legal Metrology Act, 2009.

(4) Section 2[1] of the Act defines 'manufacturer' in relation to weight and measure and it also includes a person who puts or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.

(5) Chapter-II of the Act deals with 'Standard Weights and Measures' while its Chapter-III pertains to appointment and powers of

different regulatory authorities constituted under the Act. Chapter-IV comprising Section 24 mandates 'verification and stamping of weight or measure and it reads as follows:-

**“24. Verification and stamping of weight or measure.-** (1) *Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.*

(2) *The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre.*

(3) *The Government approved Test Centre shall be notified by the Central Government or the State Government, as the case may be, in such manner, on such terms and conditions and on payment of such fee as may be prescribed.*

(4) *The Government approved Test Centre shall appoint or engage persons having such qualifications and experience and collect such fee on such terms and conditions for the verification of weights and measures specified under sub-section (2) as may be prescribed”.*

(6) Similarly, Chapter-V of the Act defines 'Offences and Penalties' and Section 33 is to the following effect:

**“33. Penalty for use of unverified weight or measure. -** *Whoever, sells, distributes, delivers or otherwise transfers or uses any unverified weight or measure shall be punished with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine”.*

(7) The petitioners have placed on record the Model Draft Legal Metrology [Enforcement] Rules of 2010 and 2011 [Annexures P6 & P7, respectively], to be notified by the States and Union Territories in exercise

of their powers under Section 52 of the Act. In addition, the Licence-Form comprising Form LM-3 which contains the conditions of licence including Condition No.1[f] mandating that the person in whose favour this licence is issued shall *“present the weights, measures, weighing or measuring instruments, as the case may be, manufactured and meant for use within the State, to the Legal Metrology Officer for verification and stamping before sale”* is also appended with the petition.

(8) The petitioners have brought on record a Circular dated 31.05.2012 [Annexure P-14] of the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, addressed to the Controller of Legal Metrology of all the States/UTs whereby guidelines for the first verification of weights and measures and weighing and measuring instruments have been laid down. The Circular is meant to reduce the hardship of manufacturers and to adopt a uniform procedure throughout the country so that **the double stamping of the same weight and measures may not be done.**

(9) Relying upon the afore-mentioned material, the petitioners assert that Section 33 contemplating penalty with fine which may extend to Rs.10,000/- or imprisonment for a term extendable to one year with fine, amounts to an unreasonable and harsh restriction on their Fundamental Right guaranteed under Article 19[1][g] read with Articles 14 and 21 of the Constitution.

(10) We have heard Mr. Yash Raj Deora, learned counsel for the petitioner, who with his very able assistance took us through various provisions of the 1976 repealed Act and juxtaposed Section 33 and some

other provisions of the new Act with the corresponding provisions contained in the old Act and urged that the obligation cast upon a manufacturer to secure verification and stamping of his/its product [weights and measures] or consequential harsh punishment if such manufacturer sells the product without such verification, amounts to an unreasonable restriction within the meaning of Article 19[6] of the Constitution and consequently it also affects the petitioners' right to life and liberty guaranteed under Article 21 of the Constitution. It was urged that Section 33 of the Act is so unreasonable and arbitrary that it equates the 'manufacturer' with 'distributors' and authorised selling agents in derogation of Article 14 of the Constitution as there can be no equality amongst un-equals.

(11) Learned counsel took us through various passages of the celebrated decision of the Constitution Bench in **Mrs. Maneka Gandhi Vs. Union of India & Another, [1978] 1 SCC, 248**, with special reference to Paragraphs 47, 48 and 56 to substantiate his contention(s).

(12) It would be beneficial to briefly notice the petitioners' grievances so as to appreciate the applicability of legal principles relied upon by them. The pre-eminent contention is that Section 24 of the Act does not obligate a manufacturer to 'verify' the weights or measures, hence such manufacturer cannot be brought within the mischief of Section 33 which contemplates imposition of penalty even for those who "sell the unverified weight or measure". It is also urged that since a punitive clause always deserves restrictive meaning, Section 33 cannot be construed to include the manufacturer who is a distinct class and the presumptive

inclusion, if any, by way of necessary implication would violate the fundamental rights of such manufacturer.

(13) The aforesaid contention(s), however, does not appeal to us. We say so for the reasons that, firstly, Section 24[1] of the Act says that “every person having any weight or measure in his **possession, custody or control**... and which is intended or is likely to be used by him in any transaction..., shall before putting such weight or measure into such use, shall have “**such weight or measure verified**” at such place or during such hours as the Controller may prescribe”. The manufacturer of the ‘weight’ or ‘measure’ instruments is their first custodian with an informed knowledge that such instruments are likely to be used in a transaction, hence the manufacturer has not been taken out of the sweep of Section 24 either expressly or by necessary implication.

(14) Secondly, Section 27 of the Act prescribes “Penalty for manufacture or sale of non-standard weight or measure” and which reads as follows:-

**“27. Penalty for manufacture or sale of non-standard weight or measure.-** Every person who manufactures or causes to be manufactured or sells or offers, exposes or possesses for sale, any weight or measure which,-

(a) does not conform to the standards of weight or measure specified by or under this Act; or

(b) which bears thereon any inscription of weight, measure or number which does not conform to the standards of weight, measure or numeration specified by or under this Act, except where he is permitted to do so under this Act, shall be punished with a fine which may extend to twenty thousand rupees and for the second or subsequent offence with imprisonment for a term which may extend to three years or with fine or with both”.

(15) Once a manufacturer is obligated to sell or offer the weight or measures which must conform to the standards of weights and measures specified under the Act, it is explicit that he/it shall seek verification of its net end product without which there can be no 'conformation' of the standards of such weight or measures under the Act.

(16) Thirdly, Section 33 prescribes penalty for the sale, distribution, delivery or otherwise transfer or use of any 'unverified' 'weight or measure'. A manufacturer is included within the ambit of Section 33 for more than one reasons. Firstly, Section 2[b] defines a 'dealer' in relation to any weight or measure, to mean *a person who, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes a commission agent, an importer, a "manufacturer", who "sells", "supplies", "distributes" or "otherwise delivers" any weight or measure "manufactured by him" to any person other than a dealer.* It may be seen that a manufacturer who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer, is also included in the definition of dealer.

(17) The word 'sale' as defined in Section 2[r] of the Act reads as follows:-

*"Sale" with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods".*

(18) On a conjoined reading of the definition of 'dealer' and 'sale' read with the legislative object behind the new enactment, nothing remains to doubt that a manufacturer, who sells or distributes the weight or measures in the market other than through a dealer also falls within the definition of 'dealer' under Section 2[b] and upon the sale of his products through a dealer, such transaction attracts the mischief of sale under Section 2[r] of the Act. Both the sale, distributorship and delivery are included under Section 33 of the Act, besides the omnibus clause 'or otherwise'.

(19) The legislative policy obligating a manufacturer to conform to the standards of weights and measures and secure such certification through verification before he sells the net end product in market, directly or indirectly, is so very apparent. Does it amount to an 'unreasonable restriction' within the meaning of Article 19[6] of the Constitution?

(20) There is always a presumption in favour of the constitutionality of a legislative enactment and it is to be presumed that the Legislature understands and appreciates the needs of its own people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in the Legislature enact laws which they considered to be reasonable for the purpose which they are enacted.<sup>1</sup>

(21) In a recent decision in **State of MP vs. Rakesh Kohli, (2012) 6 SCC 312**, the principles of constitutionality of a law have been aptly

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<sup>1</sup> Ref. (i) State of Bombay vs. FN Balsara, AIR 1951 SC 318; and (ii) KR Lakshmanan (Dr.) vs. State of TN, (1996) 2 SCC 226.



summarized to say that “(i) *presumption is always in favour of constitutionality of a law made by Parliament or a State Legislature, (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational unless some constitutional infirmity is established and found, (iii) court is not concerned with wisdom or unwisdom, justice or injustice of the law since Parliament and State Legislatures are supposed to be alive to the needs of people whom they represent and they are the best judge of the wants of the community, (iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law, and (v) in the field of taxation, legislature enjoys greater latitude for classification*”.

(22) Having given our thoughtful consideration to the issue and after analyzing the legislative policy of the Act, we are of the considered view that the contentions raised by Mr. Deora are unmerited and deserve rejection. There is no gainsaying that the Fundamental Rights guaranteed under Article 19 of the Constitution are not absolute and are subject to reasonable restrictions that may be imposed by the State against the enjoyment of such rights as authorized under Clauses [2] to [6] of Article 19 itself. The State is, thus, well within its right to impose restrictions through legislative means, to start or carry on business in the interest of general public. Whenever a Statute is impugned on the ground of imposing a fetter in the exercise of fundamental right guaranteed under Article 19[1][g], the test of reasonable restriction must be adjudged in the light of the nature of the right, the interest of the general public sought to be secured by imposing the restrictions and reasonableness of quality and

extent of fetters imposed. Suffice it to reiterate that the power to impose reasonable restriction under Article 19[6] is meant to strike balance between the freedom guaranteed by Article 19[1][g] and the social control provided by its clause [6].

(23) It is equally settled that the limitation imposed on the enjoyment of fundamental rights of a person cannot be arbitrary or of an excessive nature beyond what is required in the interest of public. The reasonableness of the restriction, thus, has to be determined objectively from the view point of the interest of general public and not of those upon whom the restrictions are imposed. In **MRF Ltd. vs. Inspector, Kerala Government, (1998) 8 SCC 227**, the Hon'ble Supreme Court summarized the following principles to determine the reasonableness of restrictions imposed under Article 19[2] to [6] of the Constitution:-

*“(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.*

*(2) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.*

*(3) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise.”*

(24) The two facets of Article 14, namely, 'equality before law' and 'equal protection of laws', are undoubtedly the basic features of our Constitution and cannot be transgressed by any Authority. The guarantee of equality as a positive concept, prohibits discrimination and obligates

that all the similarly-circumstanced persons should be treated alike both in privileges and liabilities imposed. The second part of Article 14 is an obligation of the State to provide equal protection of laws to everyone through the means of expected social and economic changes.

(25) It no longer requires an elaborate discussion or reiteration of the settled principles that if a restriction is imposed uniformly as a social measure within the protective umbrella of Article 19[6] and if it satisfies the test of reasonable classification based upon an intelligible differentia distinguishing persons or class that are grouped together from the others, such restriction by no means can be held violative of Article 14 or 21 of the Constitution.

(26) There is a marked distinction between the 'restriction' or the 'regulation' of a trade or occupation. The petitioner-Industry or other manufacturers are free to carry on the business of manufacturing weight and measures in the manner they like save as the regulatory measures incorporated in the Statute are adhered to by them in public interest including the net end consumer. Such regulatory measures, in our considered view, cannot be held as 'unreasonable restrictions'.

(27) **Sri Sri Kalimata Thakurani vs. Union of India, (1981) 2 SCC 283**, lays down that the Fundamental Rights under Article 19(1)(e)&(g) are subject to reasonable restrictions and in assessing whether or not restrictions imposed contain the quality of reasonableness, a doctrinaire approach should not be made but the essential facts and realities of life have to be duly considered and that where a restriction is imposed in

public interest in order to advance a particular purpose or carry out the dominant object, such a restriction is undoubtedly a reasonable one.

(28) The State's monopoly in the trade of Kendu leaves through legislative measures was held to be a reasonable restriction within the meaning of Article 19(1)(g) of the Constitution in **New Bihar Biri Leaves Co. vs. State of Bihar, (1981) 1 SCC 537.**

(29) In **MJ Sivani vs. State of Karnataka, (1995) 6 SCC 289,** the test to determine the 'reasonableness of restriction' of right to trade or business was elaborately considered and it was held that "*the broad criterion is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand. The Court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time*". It was further ruled that in order to determine reasonableness of the restriction, "*regard must be had to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade... and that the State, with a view to prohibit illegal or immoral trade or business injurious to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business*".

(30) It appears to us that it is in the interest of a 'manufacturer' only to seek verification of his end product so that the 'dealer' or a 'subsequent seller' in the open market is unable to accuse such manufacturer for non-

confirmation or of selling the un-verified product in the market. The provisions under challenge do not offend rather rescue the manufacturer from the penal consequences contemplated under the Act, for once the Prescribed Authority notified under Section 24 of the Act verifies the manufacturer's product, he/it stands absolved of any penal consequence that may otherwise fall upon various categories of persons under Chapter-V of the Act. The regulatory measures introduced by the Legislature through the Act are thus, neither unreasonable nor arbitrary within the meaning of Article 19[1][g] of the Constitution.

(31) The petitioners cannot allege violation of Article 14 of the Constitution for more than one reason. Firstly, the provisions of the Act apply to all the manufacturers who are placed alike comprising one and the same class. Secondly, the Act saves none including manufacturers, distributors, sellers or the consumer, if there is a violation, for which express provisions are contained in Sections 25 to 47 of the Act. We may clarify that manufacturers have been included within two penal provisions, namely, Sections 27 and 33 of the Act.

(32) The hardship which the manufacturers would have faced if they were required to obtain verification from the Controller of every State, has been effectively redressed by the Government of India through its Circular dated 31.05.2012. That hardship, in any case would not render the provisions of the Statute unconstitutional though it could be a ground to seek appropriate modulation in the Model Rules circulated by Union of India. Suffice it would be at this stage to observe and grant liberty to the petitioners that if they are aggrieved by any provision of the Model Rules

or instructions issued thereunder by the Central or the State Government, they may firstly represent the Competent Authority against such offending provisions and if still dis-satisfied, may resort to the recourse as may be available in law.

(33) Save the afore-stated liberty, we do not find any merit in this writ petition and the same is dismissed in *limine*.

(34) **Dasti**.

( **SURYA KANT** )  
**JUDGE**

**December 20, 2012.**  
**Dinesh/vishal**

( **R.P.NAGRATH** )  
**JUDGE**