

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3979/2011 & Crl. M.A.18705/2011**

% **Date of Decision: 20th November, 2015**

JOHNSON & JOHNSON LTD

..... Petitioner

Through: Mr. Vivek Sharma, Mr. Akhil Sachar,
Ms. Mamta Gautam and Ms. Prabjot
Kaur Chhabra, Advs.

versus

WEIGHTS & MEASURES

DEPARTMENT & ANR

..... Respondents

Through: Mr. Varun Goswami, APP for the
State with Mr. Rajesh Singh, Adv. for
Weights & Measures Dept.
Ms. Vijaya Singh, Adv. for
Mr. Abhishek Saket, Adv. for R-2
Mr. Umesh Kumar, LMO

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the summoning order dated 6th July, 2011 passed by the learned Metropolitan Magistrate in a complaint under Sections 39/63 of the Standards of Weights and Measures Act, 1976. The petitioner is also seeking quashing of the criminal complaint No.CC 389/1W/11.

2. On 26th February, 2011, the Inspector, Legal Metrology visited the shop of GKB Lens Pvt. Ltd. at Saket and found packets of contact lenses imported and marketed by the petitioner on which the printed Maximum Retail Price (MRP) was deleted with a permanent marker in black colour and the price of Rs.1400/- was over-written. The Inspector, Legal Metrology prepared an inspection report/ memo in which he noted the
Crl. M.C. 3979/2011

violation of MRP and overcharge of the price.

3. On 18th April, 2011, the Inspector Legal Metrology issued a notice to GKB Lens Pvt. Ltd. as well as the petitioner to notify the breach of Sections 33/39 of the Standards of Weight and Measures (Enforcement) Act, 1985 punishable under Sections 51/63 of the said Act. It was notified that the offence was compoundable under Section 65 upon payment of fine and the accused could approach the office for compounding.

4. On 26th April, 2011, the co-accused, M/s. GKB Lens Pvt. Ltd. approached the Controller Legal Metrology and compounded the offence upon payment of fine of Rs.15,000/-.

5. In July 2011, the Inspector, Legal Metrology instituted a complaint under Sections 39/63 of the Standards of Weights and Measures Act, 1976 against the petitioner in which the learned Magistrate took cognizance on 6th July, 2011.

6. The petitioner has challenged the summoning order dated 6th July, 2011 on following grounds:-

6.1. There was no material whatsoever with the Weights and Measures Department to hold that the petitioner had deleted the printed MRP on the packets of the contact lenses and had over-written the price of Rs.1400/- on it.

6.2. It was the duty of the Weights and Measures Department to have carried out an investigation before initiating the action to find out whether the over-writing of the MRP was done by the petitioner or the shopkeeper.

6.3. If retailer tears off the label of the product or simply over-writes the MRP, it would be practically impossible for any manufacturer/importer to stop the tampering with the packaging of the products.

6.4. The manufacturer/importer is responsible for the alterations till the goods are in their possession but once the goods leave their possession, the responsibility lies with the wholesaler/retailer found in possession and no responsibility in respect of tempering can be attributed to the manufacturer/importer when the product is not in their possession.

6.5. The prosecution of the petitioner amounts to gross abuse and misuse of process of law.

7. Learned counsel for the petitioner submits that no investigation whatsoever was carried out by the Department as to who has over-written the MRP on the packaged commodity. Learned counsel further submitted that there was no material on record with the respondents to show that the petitioner had deleted the printed MRP on the packaged commodity and had over-written the MRP of Rs.1,400/- on it.

8. This Court has perused the original record of the proceedings pending before the Trial Court. There is no material on record to show that the petitioner has deleted the MRP and over-written the MRP of Rs.1,400/-.

9. The issue which has arisen for consideration in this matter is whether the Weights and Measures department can launch prosecution against the manufacturer/importer for deleting/overwriting the MRP on the packaging without carrying out any investigation or having any material whatsoever.

10. This Court is of the view that it was incumbent upon the department to have carried out an investigation to find out whether the alteration has been carried out by the manufacturer/importer or the shopkeeper, which was not at all difficult. In the present case, the Inspector, Legal Metrology could have visited the shops in the vicinity to find out the alteration on the packages of the same batch number. If the alteration of the MRP was found in all the packages of the same batch in other shops also, the department

would have been justified in prosecuting the manufacturer/importer of the packages. On the other hand, if no alteration in the MRP was found on the packages of the same batch number in other shops, the presumption could be drawn that the shopkeeper had done the alteration and the manufacturer could not be prosecuted.

11. On careful consideration of the record produced by the respondents and the submissions made by learned counsel for both the parties, this Court is satisfied that the respondents have initiated the prosecution against the petitioner without carrying out any investigation and without having any material/evidence to show that the petitioner had over-written the MRP on the packaged commodity. Learned Metropolitan Magistrate did not consider this aspect and passed the summoning order in a routine manner. The summoning order does not reflect application of mind on the relevant facts mentioned above. The order dated 6th July, 2011 is therefore liable to be set aside.

12. The petition is allowed. The impugned order dated 6th July, 2011 is set aside and the criminal complaint No.CC 389/1W/11 is quashed.

13. Vide order dated 1st August, 2014, the Director, Legal Metrology was directed to consider the implication of the prosecution without any investigation and any material to prove the allegations which can lead to filing of frivolous complaints by the Inspectors in collusion with the shopkeepers. For example, a small shopkeeper selling cigarettes can make an alternation on the MRP of a cigarette box in collusion with the Inspector to start the prosecution against the Directors of the cigarette manufacturer. The course of action adopted by the department in the present case has very serious ramifications.

14. On 10th October, 2014, the respondents informed this Court having

framed the guidelines which were circulated vide circular dated 19th August, 2013. The circular dated 19th August, 2013 is reproduced hereunder:

*“GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF WEIGHTS & MEASURES
ROOM NO. 117&118, BLOCK C, VIKAS BHAWAN, NEW
DELHI.*

CIRCULAR / GUIDELINES

No. F.1/AC(W&M)/Circular/2013/1102 Dated: 19-08-2013

It has been observed that large number of LMOs is booking prosecution against firms manufacturing various medicinal items which are exempted from the provision of Legal Metrology Act, 2009 and the Rules made thereunder. On account of booking of prosecution without taking into consideration the applicability of the provision of the Act, not only an embarrassing for the Department but also a wastage of man power and precious official time.

*It has further been observed that no proper scrutiny is made by the LMO/Zonal Officer before forwarding the prosecution cases for compounding if the offences are compoundable by the Compounding Authority as well as while lodging the formal complaints in the Courts of the Metropolitan Magistrate. In case the accused party failed to turn up before the Compounding Authority, compounding of the offence allegedly committed by that person is a serious lapse on the part of Zonal Officer/LMOs. **Many a time complaint cases are filed in the Court without proper investigation and enclosing required documents which are mandatory for the prosecution proceedings against the accused party.***

Henceforth the Guidelines annexed with this circular shall be followed invariably in all the cases before forwarding for prosecution, investigation, compounding, clubbing and at the time of filing a closure report in any particular case.

*(AMAR NATH R.TALWADE)
CONTROLLER”*

15. The guidelines framed by the Weights and Measures Department are reproduced hereunder:-

“GENERAL GUIDELINES

(i) During the inspection, if the LMO comes to the conclusion that an offence which is punishable under the Legal Metrology Act or Rules made thereunder has been committed by trader, manufacturer, packer or user, as the case may be, the LMO can consider the seizure receipt and the Panchnama.

(ii) *He must take detailed entries on the same day or next working day in the register kept in the office. The format for the register is given in ANNEX I.*

(iii) *In case, there are more than one sections violated, only one case should be registered against the offender in the register.*

(iv) *If the name and address of manufacturer/packer/importer appears on the seized packages, case against the same should be registered in Case Register on the date of seizure.*

(v) *If total products seized from a single establishment for violation of different sections/rules, are more than one, even then also only one case against the defaulter firm should be registered in Case Register.*

(vi) *While investigating, LMO shall consider the following points:*

- *If the accused firm is a proprietary concern, and if Shops and Establishments Act is applicable, LMO shall obtain/procure valid copy of Shops and Establishments Act licence.*
- *Where Shops and Establishments Act is applicable, but licence is not available, LMO shall procure, a copy of any such licence/document issued by competent authority, which indicates the status of the firm and name of the owner. In case, where Shops and Establishments Act is not applicable, LMO shall take undertaking from the accused regarding the ownership of the firm.*
- *If the accused firm is a partnership concern, LMO shall procure valid copy of partnership deed.*
- *He shall ensure that all the partners are alive and are responsible for the offence. In addition, he shall obtain a copy of any other valid licence/document which contains the names of the partners.*
- *If the accused firm is private limited or public limited and the company has nominated any director as per Rule 29 of the Legal Metrology (General) Rules 2011, the LMO shall procure a copy of such nomination. If no person is nominated by the accused company, he shall procure existing list of Directors of the company along with Memorandum of Association and Article of Association. If there is any discrepancy in the names of the Directors between the two documents, he shall procure form number*

32 as per Company Act. He shall ensure that all Directors are alive and responsible for the offence.

- In the case where packaged commodities are seized from the retailer, LMO shall procure purchase bills/cash memo/delivery challans and details of dealer/distributor/packer/manufacturer/importer of the said goods.
- As per documents procured from the retailer, LMO shall find out names and addresses of all accused in the said case and prepare correspondence to the Dealer/ Distributor/ Packer/ Manufacturer/ Importer. During investigation he may avail the facility of email and various websites (website of registrar of company). He may also take help from concerned police station and concerned LMO of that jurisdiction. In the case where accused is located outside the State, he shall make correspondence to the Controller of that State through the Assistant Controller/Zonal Officer.
- LMO shall investigate with help of licences issued by Legal Metrology or other concerned authorities.
- **In case, where smudging of price on the package commodity is observed, LMO shall investigate as to who has smudged the price. If the retailer has smudged the price then the fact should be mentioned in the consent letter.**
- If the case is booked in warehouse, LMO shall inquire about the ownership of the warehouse. If the warehouse is on rental basis he shall obtain copy of Rent Agreement and fix the responsibility of the offence accordingly.
- The following procedure shall be followed by the LMO.
 - a) The Inspector should report the facts to the Zonal Officer.
 - b) In case, the accused is from outside the State, the Zonal Officer should write to the Controller of the concerned State requesting for the name and address of the concerned.”

Compounding of an offence

- i) The LMO shall ascertain whether the offence committed by the accused is compoundable.
- ii) For deciding, whether a particular offence is first or second, span of three years and

- violated the same section 18 of The Legal Metrology Act, 2009, then it will be treated as first offences.*
- iii) Period of three years should be counted from the date on which compounding amount for the first offence was deposited.*
 - iv) Inspector shall send notice to the accused within ten days in the format given in ANNEX III from the date of offence.*
 - v) On the receipt of reply/request for compounding the offence, the LMO shall submit the proposal along with necessary documents to the compounding authority through proper channel within 7 days from receipt of such request. The concerned Zonal Officer should also scrutinize the proposal and should seek compliance from the Inspector, if any, and forward the proposal to Assistant Controller/ Controller along with his remarks within three working days.*
 - vi) On receipt of the proposal for compounding, the compounding authority after examining the case in detail should pass the order within 15 (fifteen) days. The compounding authority while determining the amount of compounding fees shall have regard to the seriousness, nature of the offence and evidence on record. The concerned Zonal Officer at HQ shall take necessary entries in the compounding case register. The order passed shall be provided to the accused immediately.*
 - vii) If the compounding fee in compliance of the order is not deposited within the time as specified in order, the LMO should file the case in the court of law, within the period of limitation.*
 - viii) If no reply from the accused is received within the stipulated time limit then the LMO shall file prosecution case in the court of law with prior approval of Zonal Officer/ Assistant Controller/Controller.*

Clubbing of cases

It is a settled principle of Law, that no person should be punished multiple times for commission of same offence. In view of this, clubbing of offences becomes necessary. If a number of cases are booked in relation to the same

commodity in packaged form of the same person or company, by different inspectors for violation of the same section/rule under the Act and Rules, all such cases may be clubbed together and treated as a single offence and compounded. If a number of such cases are booked in the same Zone, the Zonal Officer of that Zone will be the authority to club the cases and if a number of such cases are booked in different Zones, then the Zonal Officer (H.Q.) will be the authority to club the cases. The following procedure shall be adopted in this regard: (a) If the accused requests, the clubbing authority, the concerned authority shall call for all case papers from the concerned in each case and scrutinize the same. (b) After scrutiny he shall ascertain whether the product seized in all the cases are for the violation of same section/rules, and thereafter case should be put up before the Compounding Authority for compounding the offence. The compounding order should be issued to the LMO who has booked the case at first and where a number of cases are booked on the same day, the compounding order should be issued to the LMO whose value of seized goods is more. The order should also mention all the other cases booked by other Inspectors of Legal Metrology along with their division and seizure receipt numbers with date.

If the compounding order has already been issued and thereafter accused approaches for clubbing, the Zonal Officer (Head Quarter) should ascertain that the violated section/rules of the offence so compounded by the Compounding Authority and cases applied for clubbing are the same and place the matter before the Competent Authority. In no case clubbing of the same offence should be done after 180 days from the date of registration of first offence. In order to issue a clubbing order, following documents should be verified:

- i) A request letter from the concerned offender for clubbing*
- ii) A copy of seizure receipt of the case which is already compounded.*
- iii) A copy of compounding order, and a copy of challan as a proof for payment of compounding amount. If the Inspector receives a clubbing request, he should verify*

the papers and make sure that the commodity in packaged form, section/rule violated in the case booked by him is the same as that in the case which is already compounded, then the Inspector shall forward the case to the Zonal Officer with his recommendations. The Zonal Officer shall send the proposal to Assistant Controller/Controller with his remarks.

Assistant Controller/Controller on receipt of such proposal from different Inspectors should take into consideration all documentary proofs and take decision regarding clubbing of the cases and pass an order to that effect within 15 (fifteen) days. The copies of the order shall be sent to all concerned. On receiving the order, concerned Inspector shall close the case after taking necessary entries in the Case Register and shall return seized goods to the concerned.

The cases of retail/wholesale dealers involved in these cases shall be treated as separate cases and compounded in usual manner.

Disposal of cases

If compounding notice sent on the addresses of the accused is returned with the postal remarks such as incomplete address, deceased, not on address, left address, in such cases the following procedure shall be adopted:

- i) If the accused is in local jurisdiction of the Inspector and he is not traceable, the LMO should visit the place of the accused and make an enquiry for tracing him. If he is not traceable, panchnama about the facts should be drawn. The proposal for closing the case should be submitted to the appropriate compounding authority along with such panchnama.*
- ii) If the accused is not in his local jurisdiction but if it is within the State, the Inspector should report this fact to the Zonal Officer who should write to his Counterpart with the request to find out and make available the details of the accused.*
- iii) If the accused is from outside the State, the Inspector should report this fact to the Zonal Officer who should write to the Assistant Controller/Controller of the concerned State with the request to find out and make*

available the details of the accused.

- iv) *The Inspector should take efforts to find out the addresses and details of the accused person from other sources such as police, Vat, Municipal Corporation/NDMC.*

Shops and Establishments organization, Registrar of companies, etc.

- i) *The Inspector may also try to find out the details of the accused by availing the facility of electronic media such as internet, mobile, telephone, etc.*
- ii) *Despite all the aforesaid efforts, if the details of accused could not be made available within six months from the date of prosecution, the matter shall be reported to the compounding authority for the closing of case.*
- iii) *If the compounding authority is Assistant Controller, he on examining the report of the Inspector, other material facts and circumstances of each case, may pass an order for closing the case and forward a copy to the Controller. It may be clarified in the order that the seized goods shall be returned to the person from whom it was seized on payment of compounding fees.*
- iv) *On the basis of such order, the Inspector can take entry in the register along with details of such order and mark the case in the register as “closed”.*

Closing of case

On investigation, if it is found that the product seized is duplicate/spurious and/or that no case is made out, then the Inspector shall submit the proposal for closing the case to the Assistant Controller/Controller through proper channel. The proposal shall be critically analyzed and forwarded with clear remarks of the concerned Legal Metrology Officer for closing the case. The reasons for closing the case must be mentioned in the order with proper justification. The decision taken should be communicated to the concerned Legal Metrology Officer and the person involved.

Filing a case in the court of law

If the office is non-compoundable, the complaint shall be filed in the court of law within the period of limitation.

If the offence is compoundable, however, the accused even

after notice is not willing to compound the offence or failed to reply within specified period or he did not deposit the compounding amount as ordered by compounding authority within the specified period, concerned Inspector shall proceed for filing the case in the court of law, immediately by following the procedure as given below:

i) Before filing a case in the court of law, the Inspector shall intimate the accused in writing.

ii) If the accused expresses in writing that he is willing to compound the offence at this stage, the Inspector should follow the procedure for compounding the offence.

iii) If there is no possibility of compounding the offence, the Inspector should file the complaint in the court, along with copies of necessary documents.

v) The Inspector should note down the court case number (C C No.) and other details in the case register maintained in the office. If the accused desires to compound the offence after filing the complaint in the court, the accused may be asked to make an application to the court to permit him for compounding the offence at departmental level and the Inspector should thereafter act as per the directions of the court.

vi) If a case pending in the court is subsequently compounded, the Inspector should make a request in writing to the court to stop further proceedings.

vii) The Inspector should carry out his role as a complainant and Assistant Public Prosecutor in the case. The assistance of Public Prosecutor shall be taken as per the necessity in the matter.

viii) In the event of transfer of the concerned Inspector who has lodged in the case in the court, he shall hand over all the case papers to the succeeding Inspector. The succeeding Inspector shall intimate in writing to the court about the transfer and thereafter he shall attend the court accordingly after the decision of the court, a proper note should be taken in the Prosecution Register.

ix) If the accused is acquitted or the punishment awarded by court is not satisfactory, then the Inspector in consultation with the Public Prosecutor should make proposal to the higher authority for consideration whether appeal or revision application is to be filed against the

order of trial court, and proceed further accordingly.”
(Emphasis supplied)

16. Mr. Varun Goswami, learned APP for State, has handed over the status report in respect of the implementation of the guidelines dated 19th August, 2013. It is submitted that the guidelines dated 19th August, 2013 are being implemented in its true letter and spirit, and the department is carrying out proper investigation before launching the prosecution. It is further submitted that 4254 cases have been booked by the department after issuance of the guidelines dated 19th August, 2013 and there is a decline of 51.09% in the current financial year as compared to previous financial year.

17. This Court appreciates the assistance rendered by Mr. Varun Goswami, learned APP for the State. This Court also appreciates the fair approach of the Department in promptly framing the guidelines on 19th August, 2013 upon the deficiencies being pointed out by this Court in the order dated 1st August, 2014 and the implementation thereof. This Court is hopeful that the Department will continue to follow the guidelines issued vide circular dated 19th August, 2013.

18. The trial Court record be sent back.

19. Copy of this judgment be sent to the District & Sessions Judges for being circulated to the Magistrates dealing with cases under the Standards of Weight and Measures Act, 1976 and Standards of Weight and Measures (Enforcement) Act, 1985.

J.R. MIDHA, J.

NOVEMBER 20, 2015