BEFORE THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI

Present:

Hon'ble Justice Thiru R. Regupathi **PRESIDENT**
Thiru J. Jayaram, **JUDICIAL MEMBER**

CC. NOS. 30/2006 & 49/2006

DATED THIS THE 9th DAY OF JULY, 2014

CC. No. 30 / 2006

1. On behalf of
   Commissioner, Civil Supplies and Consumer Protection Department and Chairman, Chennai District Consumer Protection Council,
   Ezhilagam, IV Floor,
   Chepauk, Chennai 600 005.
   Represented by : Assistant Commissioner (Inspection)
   O/o the Commissioner of Civil Supplies and Consumer Protection Department, Chepauk, Chennai 600 005.

2. Deputy Commissioner & Consumer Protection Officer, Chennai (City) South,
   Ezhilagam Annex, IV Floor,
   Chepauk, Chennai 600 005.

3. Assistant Commissioner,
   Civil Supplies and Consumer Protection Department, Thousand lights Zone,
   Chennai -10

4. Assistant Commissioner,
   Civil Supplies and Consumer Protection Department,
   Chidambaranar Zone,
   Chennai - 1 — Complainants

-Vs-

M/s. Asia Tea Company,
No.14, Narayana Chetty Street,
Periyamedu, Chennai-3
Represented by Thiru.A.Kassim Mohammed, S/o.Amir Basha (Name amended as per order in M.P. No. 81 / 2013, dated 4-6-2013)

Having godowns at

a) No.15/2A, Veerasamy Pillai Street, Periyamedu, Chennai -3.

b) No.4/484, Upparapalayam Road, Alamathi Village, Red Hills.

Opposite party

Counsel for the complainants : M/s.T.Ravikumar
Counsel for the opposite party : M/s.S.Sundaragopal

CC. NO. 49 / 2006

Consumer Association of India,
Rep by Mr.R.Desikan,
No.2, Shanthi Avenue,
Radhakrishnan Nagar,
Thiruvanmiyur, Chennai 600 041.

Complainant

-vs-

M/s.Asia Tea Company,
Rep by Thiru.A.Mohammed Kasim
No.14, Narayanan Chetty Street,
Periyamedu, Chennai – 3.

Opposite party

Counsel for the Complainant : M/s. Rajah & Venkatesan Associates

Counsel for the opposite party : M/s. Sundara Gopal

These two complaints coming before us for final hearing on 29.01.2014 and on hearing the arguments of both sides and upon perusing the material records, this Commission made the following Common Order:

COMMON ORDER

These two complaints relate to the same subject matter and same facts and same prayer; one CC No.30 / 2006 filed by the Commissioner, Civil Supplies and Consumer Protection Department, Chennai – 600 005, and the other one (CC No.49 / 2006) filed by the Consumer Association of India, Chennai – 600 041, and hence Common Order is passed.

J. JAYARAM, JUDICIAL MEMBER

The case of the complainants is as follows:

2. That, on getting information that adulterated tea was stored for sales at No.15/2A, Veerasami Pillai Street, Periamedu, Chennai, under the name and style of "Asia Tea Company" the complainant along with Assistant Commissioner, Civil Supplies & Consumer Protection Department, Chidambaranar Zone, Chennai – 1, visited the said premises on 31-03-2006. During the visit, it was noted that tea had been stored in 10 main brands as follows:

a) Royal Gold Cup
b) Garden Fresh
c) Sunny Supreme
d) Royal New Classic
e) Royal Blend
f) Assam Dust Tea
g) Double Parrot Tea
h) Royal Star Tea
i) Kerala Dust Tea
j) Asia's Super Dust Tea

in 22 different kinds of packing with different weights and bundled in carton boxes. On enquiry with the staff of the said company who were available in the said premises, it was learnt that one Thiru A. Kasim Mohamed, resident of No.14, Narayana Chetty Street, Periamedu, Chennai – 600 003, was the owner of the said company namely the opposite party herein. The staff were not able to produce the licence issued by the Chennai Corporation for storage and sale of tea, but showed the renewal application No.14017, dated 17-02-2006 to be presented to Chennai Corporation for the renewal of their licence as a dealer. By simple test check, it was suspected that tea contained in small packets as detailed above was adulterated. The Assistant Commissioner purchased 10 packets of the said tea vide bill Nos.261 & 262 dated 31-03-2006 for a total amount of Rs.403-75 and informed the Assistant Commissioner, Civil Supplies & Consumer Protection Department, Thousand Lights Zone, Chennai – 10. The said Assistant Commissioner arrived at the premises along with Health Officer of Chennai Corporation. Since tea stored therein was found to be adulterated by test check, Chennai Corporation Officials sealed the stock of about 1.5 tons of tea available there in a room in the same premises. Further, a quantity of about 17 ton was seized and sealed in the premises of M/s Asia Tea Company, No.4/484, Upparapalayam Road, Alamathi Village, Red Hills (via), Chennai – 600 052, on 01/04/2006 by the Deputy Director, Public Health, Tiruvallur, District Supplies and Consumer Protection Officer, Tiruvallur & Food Inspectors concerned. A statement was obtained from the opposite party herein. The opposite party appeared before the Deputy Commissioner & Consumer Protection Officer, Chennai (City) South, on 03/04/2006 and gave his written statement that he was the owner of

the said business concern. Besides, the said company owned a godown at Alamathi Village, Red Hills, where the company stored tea. The opposite party admitted in writing that he mixed colouring agent viz. sunset yellow / carmoisine with tea dust before selling tea. He also accepted that he knew that adding or mixing colouring agent with tea was an offence. Further enquiry revealed that the opposite party was manufacturing and selling tea under the name and style of M/s Asia Tea Company and having godowns one at No.15/2A, Veerasami Pillai Street, Periamedu, Chennai–3, and another No.4 / 484, Uppara-palayam Road, Alamathi Village, Ponneri Taluk, Tiruvallur District, with registered office at No.14, Narayana Chetty Street, Periamedu, Chennai – 3, and that they were doing tea manufacturing and selling business for the past 15 years under 7 brand names viz., (1) Asian Sunny Tea, (2) Asian Red Rose, (3) Asian Super Dust Tea, (4) Asian Gold Cup Tea, (5) Asian Kerala Dust Tea, (6) Asian Double Parrot Tea, and (7) Asian Assam Dust Tea.

3. The Health Officer, Corporation of Chennai, verified 14 Tea samples stored in the premises and found that 3 samples were adulterated due to admixture of colouring matter like hetrozine, tatrazine, carmoisine and sunset yellow as per test report No.4/06-07, dated 20-04-2006. Earlier on 24/01/2006, the District Supply and Consumer Protection Officer of Vellore District had taken samples by brand name Asia Kerala Dust Tea sold by the opposite party to retailers on 24/01/2006 at a retail shop in Vellore District and got it analyzed through food analysis laboratory, King Institute, wherein it was certified that the said tea was having adulterated content viz. Tatrazine, Sunset Yellow and Carmoisine as per test report dated

22/02/2006. Among samples purchased, samples labelled Asia Kerala Dust Tea and Asia Super Dust Tea were found to be containing colouring agent, as per the report of King Institute, Chennai. The samples did not conform to standards since they were found to contain added synthetic colours and the addition of such colours are prohibited in tea as per Rules 23 and 29 of Prevention of Food Adulteration Rules, 1955. Thus, it was amply shown that the opposite party had marketed adulterated tea throughout the State harming the health of the consumers. They had been cheating lakhs of unsuspecting consumers over several years by selling synthetically coloured substances that is not tea as defined under Prevention of Food Adulteration Act. The additives used by the opposite party are a cause for allergy, intolerance reaction, kidney tumours, chromosome damages, indigestion, Asthma, etc, besides attention deficiency, hyperaction disorder (ADHD) and other such health problems in children. The labels of the various tea brands sold by opposite party did not contain any reference to artificial colour added. This would tantamount to misbranding under Sec 22 of the Prevention of Food Adulteration Act, 1955. Further, calling the products sold by the opposite party as tea is an unfair trade practice as defined under Sec 2 (1) (r) (1) (i) as well as under Sec 2 (1) (r) (4) of the Consumer Protection Act, 1986. The safety and health of the consumers had been thrown to wind by the opposite party in the sole interest of making profit. Further, the opposite party failed to provide clear and complete address as mandated under Order 4 of the Packaged Commodities (Regulation) Order, 1975 issued under the Standards of Weights and Measures Act, 1976. The address in all "tea" packages sold by the opposite party read "Asia Tea Company, Periamedu

Market, Chennai–3". The opposite party deliberately violated the law by failing to provide the correct door number, street name and pin code with the hope of escaping from the law and misleading consumers about the whereabouts of the company. Samples of tea sold by the same opposite party on 16/02/1999 were found to be adulterated with cashew husk as well as colouring agents as confirmed by the Public Analyst, King Institute, Chennai vide his report. A case was also filed under the Essential Commodities Act, 1955, in FIR 67/99 by Civil Supplies CID wing and is under progress. Even after the passage of seven years, the opposite party continued to do the unfair trade to the detriment of the public at large. As per the records available, the turnover of the opposite party company was Rs.11,26,29,864/- for the year 2004-05. The Government have also filed a complaint against the opposite party and had issued a show cause notice dated 18/04/2006. The opposite party was summoned to explain the cause for the above lapses. The opposite party submitted written explanation refuting the charges but no material evidence was produced.

4. The prayer in both the complaints is for direction to the opposite party:

(i) Immediately discontinue the unfair trade practice of manufacturing and selling adulterated tea as per Sec 14 (1) (f) of the Consumer Protection Act, 1986 (for short, "Act, 1986);

(ii) Immediately withdraw the adulterated hazardous tea marketed by them which are being offered for sale through their dealers and at hundreds of retail points across Tamil

Nadu and neighbouring States as per Sec 14 (1) (h) of Act, 1986;

(iii) Immediately cease manufacturing of hazardous adulterated tea by them as per Sec 14 (1) (ha) of Act, 1986 and also bar the opposite party under Sec 14 (i) (g) from selling such hazardous goods;

(iv) Pay compensation of Rs.98 Lakhs to be credited into the Tamil Nadu State Consumer Welfare Fund (TNSCWF) Account under Sec 14 (i) (hb) read with rule 5 (e) of TNSCWF and rules notified by Government of Tamil Nadu (exhibit TNSCWF Rules) for the health loss or injury and financial loss to lakhs of consumers (very large number of consumers) because of the unfair trade and selling of adulterated tea by the opposite party as per Sec 14 (1) (hb) of Consumer Protection Act, 1986 as a token of punishment;

(v) Pay the costs suffered by the Department in this case under Sec 14 (1) (i) of Act, 1986; and

(vi) Pay costs of the proceedings

5. The opposite party did not appear and contest the case before the Commission, and hence, he was set exparte by the Commission, and the Commission presided over by the then President Hon'ble Justice K. Sampath, with Member Thiru Pon. Gunasekaran allowed the complaint stating as follows: "As already noted, the opposite party did not choose to appear and contest the case. Ex.A1 to A11 have been marked .....". All these exhibits clearly establish that

the opposite party had been selling adulterated tea to the general public.

6. The opposite party filed First Appeal before the Hon'ble National Commission against the order of the State Commission, and the Hon'ble National Commission allowed the appeal No.757 / 2007 on 02-12-2009 and set aside the impugned order of the State Commission and remanded the case to the State Commission for granting an opportunity to the opposite party to file written version before the State Commission and deciding the issue afresh.

7. Witness S. Sekar, Cashier of the opposite party has stated in the affidavit, that the opposite party is not having any business at No.14, Narayana Chetty Street, Periamet, Chennai – 600 003 and on 31-3-2006, some officials claiming to be attached to the complainants' office (in CC No.30 / 2006) visited the office of the opposite party, and they threatened him and Munusamy, and both of them were made to sign statements under coercion.

8. The other witness by name G. Munusamy, salesman of the opposite party's company has stated in the affidavit that he along with the Cashier S. Sekhar signed statements under coercion by the complainants.

9. The official Mr. M. A. Rajaram who filed the proof affidavit in CC No.30 / 2006 on behalf of the complainant viz. the Commissioner of Civil Supplies, and Consumer Protection Department, was cross-examined by the opposite party.

10. The complainant in CC No.49 / 2006 – R. Desikan who filed proof affidavit representing the Consumer Association of India, Chennai was cross examined.

11. 10 Documents were filed and marked as Ex.A1 to A10 on the side of the complainants; and 3 documents were filed and marked as Ex.B1 to B3 on the side of the opposite party.

12. Ex.A1 is the statement of the Cashier, and the salesman of the opposite party company, dated 31-3-2006; Ex.A2 is the report of Taluk Supply Officer, Ponneri; Ex.A3 is the statement of A. Kasim Mohamed before the Deputy Commissioner and Consumer Protection Officer, Chennai (South); Ex.A4 is the Analysis report of Chennai Corporation; Ex.A5 is the Analysis report of King Institute, dated 22-2-2006; Ex.A6 is the Analysis report of King Institute, dated 2-5-2006; Ex.A7 is the Commentary of WHO / PAO Expert consultation on diet, nutrition and prevention of chronic diseases; Ex.A8 is the statement of A. Kasim Mohamed before the Deputy Commissioner and Consumer Protection Officer, Chennai (South); Ex.A9 is the Analysis Report of King Institute; and Ex.A10 is the Form 19 issued by the CTO.

13. Ex.B1 is the renewal license issued by the Corporation of Chennai, Revenue Department, dated 14-2-2005 to the Proprietor A. Kasim Mohammed; Ex.B2 is the renewal license dated 17-2-2006 issued by the Corporation of Chennai to the Proprietor of Asia Tea Company A. Kasim Mohamed; and Ex.B3 is the reply notice issued by A. Kasim Mohamed to the Commissioner of Civil Supplies and Consumer Protection Department, dated 25-4-2006.

14. <u>The points for consideration are</u>:

(i) Whether the complaints are maintainable under the Consumer Protection Act;

(ii) Whether the opposite party adopted unfair trade practice of manufacturing and selling adulterated tea;

(iii) If so, whether the opposite party is liable for action under Sec. 14 (1) (f); 14 (1) (g); 14 (1) (h); 14 (1) (ha); 14 (1) (hb) read with rule 5 (e) of TNSCWF.

15. Point No.1:

The appellant / opposite party would first contend that these complaints are not maintainable under the Consumer Protection Act, since a case has already been filed against the opposite party under the Essential Commodities Act, 1955. We have to understand that the relief claimed under the Consumer Protection Act is not in derogation of any other law as contemplated under Sec 3 of Consumer Protection Act.

Section 3: "Act not in derogation of any other law – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force".

16. It was pointed out by the learned counsel for the opposite party that, of the two complaints against the opposite party, in one case CC No.30 /2006, the name of the opposite party is amended and corrected as A. Kasim Mohamed, and that in the other complaint CC No.49 / 2006 the name of the opposite party is omitted to be corrected and is mentioned as A. Mohamed Kasim instead of the correct name A. Kasim Mohamed. This is a omission as far as CC No. 49 / 2006 is concerned, which will not vitiate the proceedings. Admittedly, and

indisputably, the correct name of the opposite party is, A. Kasim Mohamed. Therefore, in both the complaints, the opposite party is one and the same person by name A. Kasim Mohamed.

17. The learned counsel for the opposite party would further contend that there cannot be two complaints over the same subject matter. It is pertinent to note that CC No.30 / 2006 has been filed by the Commissioner of Civil Supplies and Consumer Protection Department; and the Chairman, Chennai District Consumer Protection Council; whereas, CC No.49 of 2006 has been filed by the Consumer Association of India. Both the complaints are over the same subject matter, and both the complaints are one and the same, but filed by two different persons, and therefore both the cases are clubbed together and Common Order is passed; and there is no illegality in it, and the contention of the opposite party in this regard is untenable.

18. Therefore, we hold that the complaints are maintainable under the Consumer Protection Act, and the point is answered accordingly.

19. Point No.2:

On consideration of the entire evidence, it is clearly established by the exhibits filed on the side of the complainants that the opposite party had been selling adulterated tea to the customers. The opposite party himself has made statements before the complainant in CC No.30 / 2006, the Commissioner of Civil Supplies admitting the averments and allegations in the complaint; and the averments and allegations are well established by the records / exhibits.

20. It is further contended by the opposite party that Tea is not a food or food stuff as laid down by the Hon'ble Supreme Court in the case of S. Samuel, MD, Harrisons Malayalam and Another reported in (2004) – I – Supreme Court Cases – 256.

21. It is relevant to note that the instant cases before us are filed under the Consumer Protection Act; and so we are concerned only with the goods and products involved. Therefore, in view of the fact that the complaints are filed under the Consumer Protection Act, the question whether tea is food / food stuff or not does not arise and the seized products concerned in the complaints are the products / tea packets. Therefore, the contention of the opposite party in this regard is unsustainable.

22. The further contention of the opposite party is that the lab tests, etc., as contemplated under Sec 13 (1) (c) of the Consumer Protection Act have not been followed in this case, which vitiates the proceedings, but we find that proper tests have been carried out in proper manner and the analysis reports viz. Ex.A4, the Analysis Reports of Chennai Corporation; Ex.A5 – another Analysis Report of King Institute; Ex.A6 - Another Report of King Institute, Chennai; Ex.A7 – Commentary of WHO / PAO – Expert consultation on diet, nutrition and prevention of chronic diseases; Ex.A9 – Analysis Report of King Institute have been filed; and these reports substantiate the adulterated state of the tea products; No prejudice would be caused to the opposite party and there is no force in the contention of the opposite party in this regard.

23. The further contention of the opposite party is that the Paper Chromatography test is not sufficient to detect the presence of

unpermitted Coal Tar Dye as held by the Hon'ble Punjab and Haryana High Court in Shamsundar vs. State of Haryana – Crl. Revision No.719 / 1987, dated 23-4-1997. The decision does not have any significance to the present case since various tests have been conducted and various adulterants have been detected in the tests, and therefore the contention of the opposite party in this regard is without substance.

24. The Hon'ble National Commission in V.P. Sant vs. Chairman, Delhi Development Authority – 1995 (1) – CPR – 837, has held that, "The proceedings under the Act are time-bound and are not required to be shackled and niceties and technicalities of the procedure. The rigid adherence to the technicalities of the procedure would defeat the scheme, scope and purpose of the Act ..... The reliefs could not be denied on a hyper-technical interpretation of the rules". Therefore, we need not attach much importance to the minor procedural defects pointed out by the learned counsel for the opposite party.

25. Therefore, for the aforesaid reasons, we hold that it is properly established that the opposite party indulged in manufacturing and selling adulterated tea; and indulged in unfair trade practice.

26. Therefore, we hold that the opposite party adopted unfair trade practice of manufacturing and selling adulterated tea, and the point is answered accordingly.

27. Point No.3:

In view of the finding on point No.2, we hold that the opposite party is liable for action under Sections: 14 (1) (f); 14 (1) (g); 14 (1)

(h); 14 (1) (ha); and 14 (1) (hb); r/w rule 5 (e) of TNSCWF, and the point is answered accordingly.

28. We have to take note of the fact that even in 1993 the opposite party had been proceeded against for adulteration under the provisions of Essential Commodities Act, 1955. The additives may cause serious health problems, and various diseases.

29. Materials have been produced to show that the annual business turnover of the opposite party for the year 2004-2005 was Rs.11,26,29,864/- as per Form 19 issued by the concerned Commercial Tax Officer by selling adulterated tea to a large number of customers warranting issuance of the following directions.

30. It would be worthwhile to note the observations made in the earlier order of the State Commission delivered by Hon'ble Justice K. Sampath, where it is held as follows:

> *"It is also seen that even in 1993, the opposite party had been proceeded against for adulteration under the provisions of The Essential Commodities Act, 1995. The additives had been linked to Asthma and itching in susceptible people, allergy, intolerance reaction, kidney tumors, chromosome damages, indigestion, besides attention deficiency hyperaction disorder (ADHD) and other such problems in children. We are satisfied that the opposite party had indulged in unfair trade practice of manufacturing and selling adulterated tea as per Sec. 14 (1) (f) of the Act, 1986. The allegations made in the complaint are held to have been established".*
>
> *"It would therefore be in the interests of justice and the welfare of the consumers that a direction is issued to the opposite party to withdraw the adulterated hazardous tea marketed by them forthwith and also direct them to immediately cease manufacturing of hazardous adulterated tea. Materials have*

been produced to show that the annual turnover of the opposite party runs to over Rs.10 Crores apparently thanks to the egregious unfair trade practice indulged in by them selling adulterated tea to lakhs of innocent consumers. It would be highly just and in the fitness of things if the opposite party is directed to deposit a reasonable amount to the Tamil Nadu State Consumer Welfare Fund (TNSCWF) Account as deterrent and recompense for the health loss, injury and financial loss caused to lakhs of consumers by their unwholesome conduct".

31. It is pertinent to note that as per proviso to Sec 14 (1) (hb) of the Act, r/w rule 5 (e) of TNSCWF, the opposite party must be directed to credit a sum to the Tamilnadu State Consumer Welfare Fund, which shall not be less than 5 % of the value of the goods involved, and in that case, the amount to be credited would be about Rs.50 Lac. However, considering the facts and circumstances of the case and having regard to the efflux of time, we are inclined to be a little lenient and we direct the opposite party to credit a sum of Rs.25,00,000/- (Rupees Twenty Five Lac only), though a sum of Rs.98 Lac is claimed in the complaint.

32. In the result, both the complaints are allowed, holding that the opposite party adopted unfair trade practice, and directing the opposite party:-

a) To discontinue the unfair trade practice as under Sec 14 (1) (f) of the Act,

b) Not to offer the hazardous goods for sale as under Sec 14 (1) (g) of the Act;

c) To withdraw the hazardous goods from being offered for sale as under Sec. 14 (1) (h) of the Act;

d) To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature as under Sec 14 (1) (ha) of the Act;

e) To credit a sum of Rs. 25,00,000/- (Rupees Twenty Five Lac only) to the Tamilnadu State Consumer Welfare Fund Account within a period of two months from the date of this order – as contemplated under Sec 14 (1) (hb) r/w rule 5 (e) of TNSCWF.

33. The opposite party shall pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant in CC No. 30 / 2006, and costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant in CC No.49 / 2006, (Total cost: Rs.20,000/-). Time for compliance for payment of costs – one month from the date of receipt of copy of this order.

34. We would like to place on record our appreciation of the good job done by the Consumer Association of India, Chennai represented by Mr. R. Desikan, and the able assistance and the co-operation extended by the advocates appearing on both sides in both the cases.

(J. JAYARAM)
JUDICIAL MEMBER

(R. REGUPATHI)
PRESIDENT

Exhibits on the side of the Complainants':

Ex.A1	31-03-2006	Statement of Cashier and salesman M/s Asia Trading Company
Ex.A2		Report of TSO, Ponneri

Ex.A3		Statement of Thiru A. Mohamed Kasim before Deputy Commissioner & Consumer Protection Officer, Chennai South.
Ex.A4	20-04-2006	Analysis Report of Chennai Corporation No.4/06-07
Ex.A5	22-02-2006	Analysis Report of King Institute No.23760/05-06.
Ex.A6	02-05-2006	Analysis Report of King Institute No.20074/06-07.
Ex.A7		Commentary of WHO/PAO expert consultation on Diet, Nutrition and Prevention of Chronic Diseases.
Ex.A8		Statement of Thiru A. Mohamed Kasim before Deputy Commissioner & Consumer Protection Officer, Chennai South
Ex.A9		Analysis report of King Institute, No.21312/98-99
Ex.A10.		Form 19, issued by CTO.

Exhibits on the side of the Opposite Party:

Ex.B1	14-02-2005	Renewal Licence by Corporation of Chennai
Ex.B2	17-02-2006	Renewal Licence by Corporation of Chennai
Ex.B3	25-04-2006	Reply to show cause notice.

(J. JAYARAM)
JUDICIAL MEMBER

(R. REGUPATHI)
PRESIDENT

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI
TAMIL NADU C.C 30/06, C.C 49/06

1. Date of Order 9.7.14
2. Date when copy was made ready for issue 10.7.14
3. Date of delivery / dispatch of the copy 11.7.14
4. Date of application for duplicate copy .....
5. Date of issuance of duplicate copy .....

10.7.14
REGISTRAR
STATE COMMISSION
TAMIL NADU