PETITIONER:
M/S INDIA PHOTOGRAPHIC CO. LTD.

Vs.

RESPONDENT:
H.D. SHOURIE

DATE OF JUDGMENT: 03/08/1999

BENCH:
R.P.Sethi, S.Saghir Ahmed

JUDGMENT:

SETHI,J.

Alleging that the appellant herein was selling the films as a representative of Kodak without price being printed on the packages containing films, the respondent filed a complaint before the District Consumer Disputes Redressal Forum, Delhi (hereinafter referred to as 'the District Forum') with a prayer for the issuance of appropriate directions to protect the interests of the consumers. It was contended that the price printing on the packages was mandatory under the provisions of the Packaged Commodities Rules promulgated under the Standards of Weights and Measures Act, 1976. The appellant put all sorts of resistances in the disposal of the complaint. Writ petitions were filed in the High Courts of Andhra Pradesh and Kerala with prayer for setting aside the proceedings pending before the District Forum. The appellant , however, opted not to file any reply to the complaint. Being satisfied that the High Courts, where the writ petitions had been filed on behalf of the appellant had not stayed the proceedings, the District Forum found that the complaint filed was in the general interests of the consumers who were entitled to know the price of the product which was required to be conspicuously displayed and if that was not done, the interests of the consumers would be jeopardised resulting in the charging of exorbitant price by the unscrupulous retailers dealing in the sale of Kodak films. Being satisfied that the action of the appellant was in violation of the rules applicable in the case, the District Forum vide its order dated February 28, 1989 directed the appellant to display the sale price of the film on the package in a manner so as not to violate the order of stay passed by the High Courts where writs were pending within one month from the date of the order under intimation to the District Forum. In appeal the State Consumer Disputes Redressal Commission (hereinafter referred to as 'the State Commission') held that it would be in the in the interest of justice for the appellant -company to (i) publish the price of the film in a national daily fortnightly; (ii) to print notice on its invoice - asking the dealers to print or attach a price tag on the film before selling it to the customer, (iii) issue circulars to each dealer to print or affix a price tag on each film before selling the film to the customer and (iv) attach price tag on each unit in their

own shop/outlet before it is sold to the customer. Not satisfied with the order of the State Commission the appellant herein approached the National Consumers Disputes Redressal Commission (hereinafter referred to as 'the National Commission' who vide the order impugned dismissed the revision petition with the following observations:-

"We would however clarify that when cartons containing large numbers of film rolls are sold from their out-let on wholesale basis in an unopen condition, it would constitute sufficient compliance with the directions issued by the State Commission. If the revision petitioner affixes to each carton a sticker clearly indicating the price at which each film roll is to be sold in retail and the retailers are informed by a circular that they are not to sell the rolls at any price exceeding what is indicated on the sticker. In the event however, of the petitioner effecting retail sales from their outlet in Janpath each packet containing a single roll of film sold by them should bear a sticker showing the price of the film roll".

It is contended on behalf of the appellant that the District Forum, the State Commission and the National Commission were not justified in issuing the directions to the appellant as according to their learned counsel neither any rule nor any statute mandated or cast upon them an obligation to exhibit /publish or print the price on the films rolls being imported and sold in India by its distributor. It is submitted that sub-rule (2) of Rule 6 of the Standards of Weights and Measures (Packaged Commodities Rules, 1977 (hereinafter called 'the Rules') stood amended at the relevant time which excluded the dealer from affixing the price on the package of the film roll. The only requirement of law was to display prominently at a conspicuous place of the premises in which the retail business was being carried on, the rates at which the local taxes were leviable or at the most the price of the commodities sold. The Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of the consumers by making provisions for the establishment of consumer councils, other authorities for the settlement of consumer disputes and for matter connected therewith. The Act was enacted as a result of wide spread consumer protection movement. On the basis of the report of the Secretary General on Consumer Protection dated 27th May, 1983 , the United Nations Economic and Social Council recommended that the world governments should develop, strengthen and implement a coherent consumer protection policy taking into consideration the guidelines set out therein. Each government was obliged to set its own priorities for the protection of consumers in accordance with the economic and social conditions of the country keeping in view the needs of its people and bearing in mind the costs and benefit of the proposed legislation Government were to further provide adequate infrastructure including the establishment of public bodies as well as financial facilities to develop, implement and monitor consumer protection policies. The introduction of new products in the developing countries was to be assessed in relation to the local conditions having regard to the existing production, distribution and consumption patterns of the country or region concerned. The various enactments such as the Contract Act, the Standards of Weights and Measures Act, the Motor Vehicles Act , the Monopolies and Restricted Trade Practices Act, Food Adulteration Act etc. were found to be

inadequate in providing the relief to the consumers. In discharge of the international obligations and to protect the interest of the consumer in the country, the Consumer Protection Act, 1986 was enacted(hereinafter called 'the 1986 Act '.) The reference to the consumer movement and the international obligations for protection of the rights of the consumer, provision has been made herein with the object of interpreting the relevant law in a rational manner and for achieving the objective setforth in the Act. Rational approach and not a technical approach is the mandate of law. The Standards of Weights and Measures Act, 1976 (Act 60 of 1976) was enacted to establish standards of weights and measures, to regulate inter State trade or commerce in weights and measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith or incidental thereto. Section 83 empowers the Central Government to make rules for carrying out the provisions of the said Act. In exercise of the aforesaid powers, the Central Government made the "The Standards of Weights and Measures (Packaged Commodities) Rules 1977 (hereinafter called 'the Rules"). Chapter II deals with the provisions applicable to packages intended for retail sale. Rule 3 provides that the provisions of the aforesaid Chapter shall apply to packages intended for retail sales and the expression "packaged" when it occurs, shall be construed accordingly. Rule 4 provides that no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon or on a label securely affixed thereto such declaration as is required to be made under the rules. According to Rule 5 specific commodities are required to be packed and sold only in standard packages. Rule 6 as it existed at the relevant time provided thus:-

"6.Declaration to be made on every package-(1) Every package shall bear thereon or on a label securely affixed thereto a definite plain and conspicuous declaration, made in accordance with the provisions of this Chapter as, to -

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, of the packer or with the written consent of the manufacturer, of the manufacturer;

(b) the common or generic names of the commodity contained in the package; Explanation:-- Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt, sodium chloride is the generic name.

(c) the net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package;

(d) the month and year in which the commodity is manufactured or pre-packed

(e) the unit of the commodity contained in the packages:

Provided that this declaration is not necessary in the case of packages packed in the standard quantities specified in the Third Schedule and the Sixth Schedule of these rules:

Provided further that such declaration shall not be necessary in the case of packages of these commodities which are not specified in the Third Schedule but are packed in quantities of 50 g. 100g. 200g, 500g 1kg. 2kg., 5kg., or in multiples of 5 kg. Or in 50 ml, 100 ml. 200 ml. 500 ml. 1 litre, 2 litres, 5 litres and in multiples of 5 litres.

(f) the sale price of the package;

(g) where sizes of commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece;

(h) such other matters as are specified in these rules:

Provided that-

(A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on- (i) any bottle containing liquid milk, liquid beverages containing milk as an ingredient, soft drink, ready-to-serve fruit beverages, or the like, which is returnable by the consumer for being refilled; (ii) any package containing bread and any uncanned package of (a) vegetables ,(b) fruits,(c) ice cream, (d) butter, (e) cheese, (f) fish, (g) meat or (h) any other like commodity; (iia) liquid milk in pouches; (iii)any package containing metallic product; (iv) any cylinder containing liquified petroleum gas or any other gas; (v) any package containing chemical fertilizer;

(B) wherein any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre-packing the concerned commodity produced or manufactured during the next succeeding month and not thereafter, but the Central Government may, it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer, as the case may be, extend the time during which such packaging material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for pre- packing the concerned commodity;

(C) no declaration as to the sale price shall be required to be made on - (I) any uncanned package of (a) vegetables, (b) fruits, (c) ice cream, (d) cheese, (e) butter, (f) fish, (g) meat or (h) any other like commodity;

(ii) any bottle containing liquid milk, liquid beverages containing milk as an ingredient , soft drink, ready-to-serve fruit beverages, or the like, which is returnable by the consumer for being refilled; (iii) any bottle containing alcoholic beverages, or spirituous liquor; (iv) any package containing animal feed exceeding 15 kg or 15.1; (v) any package containing a commodity for which controlled price has been fixed by or under any law for the time being in force. Explanation I. The month and the year in which the commodity is pre-packed may be expressed either in words, or by numerals indicating the month and the year, or by both. Explanation II. Liquid milk does not include condensed milk. (2) Every dealer or other person who makes a retail sale of any commodity in packaged form shall, where local taxes have to be added to the price indicated on such package by the manufacturer or the packer, display prominently at a conspicuous place of the premises in which he carries on his retail sale, the rates at which local taxes are leviable in respect of the commodities sold in packaged form."

It is contended that sub-rule(2) of Rule 6 alone was applicable in the case because the goods in the form of Kodak films were being sold by the distributor and not by the manufacturer. It is further contended that sub-rule(1) of Rule 6 is applicable to the manufacturers alone. We are not satisfied with such submission. Accepting such a plea would result in frustrating the provisions of the 1986 Act and thereby encourage the retailers or distributors of foreign made goods to charge prices according to their convenience without letting the consumer know the actual price of the commodity. A perusal of Rule 6(1) of the Rules clearly shows that the stress of the sub-rule is upon the package and not upon the person manufacturing or selling the package. The provisions of sub-rule (2) apparently appear to be in addition to the obligations cast upon the manufacturer and the dealer under sub-rule (1) of Rule 6 of the Rules. We are also not impressed with the argument of the learned counsel for the appellant that before its amendment on 8-8-1986, Sub-rule (2) as it then stood cast such an obligation to display the price but not thereafter. By amendment provisions of sub-rules (2) and (3) appears to have been incorporated in sub-rule (2) only by deleting sub-rule (3). The superfluous and additional words existing in sub-rule (2) before its amendment were rightly deleted in view of the specific provisions of Chapter II comprising rule 3,4,5 and 6 as noted herein earlier. The dealers are, therefore, obliged to comply with the provisions of sub-rule (1) of Rule 6 of the Rules notwithstanding the confusion if any conceived by them under Rule 6(2) before its amendment.

During the course of the argument the learned counsel appearing for the respondent has shown us some packages of the Kodak films wherein the maximum retail price inclusive of all taxes has already been displayed. It is worth noticing that on those packages a specific mention is made of "not for resale outside India." It appears that the product of Kodak films, a multi-national company are being manufactured and distributed in India, thus neither the manufacturer nor the distributor or retailer can escape the liability of complying with the provisions of Rule 6 of the Rules.

After examining the matter from various aspects, we do

not find any infirmity or illegality in the order of the National Commission requiring interference. The appeal is accordingly dismissed, but in the circumstances without any order as to costs.