

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 10TH DAY OF MARCH 2021 / 19TH PHALGUNA, 1942

WP(C).No.12508 OF 2014(S)

PETITIONER/S:

HUMAN RIGHTS MISSION,
STATE COMMITTEE, HEAD OFFICE, P.B.NO. 87, GURUKULAM COLLEGE
BUILDING, OLD PRIVATE BUS STAND, PATHANAMTHITTA REPRESENTED
BY ITS JOINT SECRETARY, P.D. SUJENDRAN, S/O. T.K. DAMODARAN,
PULLAPLAVIL, PERUNNA.P.O., CHANGANACHERRY, KOTTAYAM.

BY ADV. KUM.D.MINI RAJAN

RESPONDENTS:

- 1 DIRECTOR, KERALA STATE GROUND WATER DEPARTMENT
JALAVINJANA BHAVAN, AMBALA MUKKU, KAVIDIAR.P.O.,
THIRUVANANTHAPURAM-695 001.
- 2 DISTRICT OFFICER,
GROUND WATER DEPARTMENT, TALUK OFFICE BUILDING, NEAR
THIRUNAKKARA TEMPLE, OPP. SHENOY COMPANY, KOTTAYAM-686 001.
- 3 DISTRICT OFFICER,
DISTRICT GROUND WATER DEPARTMENT, KOIPURATHU BUILDING,
KUMBAZA MURI.P.O., PATHANAMTHITTA-689 645.
- 4 THE DIRECTOR,
FOOD SAFETY STANDARD AUTHORITY OF INDIA,
THIRUVANANTHAPURAM-695 014.
- 5 THE DIRECTOR,
GOVERNMENT OF KERALA HEALTH DEPARTMENT,

THIRUVANANTHAPURAM-695 001.

- 6 DIRECTOR,
BUREAU OF INDIAN STANDARDS, II-ND FLOOR, BANKARATH TOWER,
SIGNAL JUNCTION, N.H. BYEPASS ROAD, PALARIVATTOM, EDAPPALLY.
P.O., KOCHI. PIN-682 024.
- 7 ADDL.R7 TO R11 IMPEADED:
CHRYSTAL AQUA,
KALATHIPADY, NEAR PALLIKKUDAM SCHOOL, KOTTAYAM, REPRESENTED
BY ITS PROPRIETOR, PIN-686 001.
- 8 ADDL.R8 GREEN WATER
NEAR COLLECTORATE, KOTTAYAM, REPRESENTED BY ITS PROPRIETOR,
PIN-686 001.
- 9 ADDL.R9 POOJA THEERTHAM,
KURICHI, KOTTAYAM, REPRESENTED BY ITS PROPRIETOR, PIN-686 001.
- 10 ADDL.R10 KAIRALI AQUA,
WARD SB, 198, MITHRAKKERI PO, MAMPUZHAKKERI, ALAPPUZHA,
REPRESENTED BY ITS PROPRIETOR, PIN-688 001.
- 11 ADDL.R11 PRIESTINE
KADUVAKKULAM, KOTTAYAM, REPRESENTED BY ITS PROPRIETOR,
PIN-686 001.
(ADDL.R7 TO R11 ARE IMPEADED VIDE ORDER DATED 20/10/2014 IN
IA.NO.13433/2014)

R1-5 BY SRI. SURIN GEORGE IPE, SR. GOVERNMENT PLEADER
R6 BY ADV. SRI.MANOJ RAMASWAMY, SC
R10 BY ADV. SRI.T.G.RAJENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-03-2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 10th day of March, 2021.

JUDGMENT

SHAJI P. CHALY, J.

The petitioner, Human Rights Mission, claiming to be a registered society, has filed this writ petition as a Public Interest Litigation, challenging the action of the unauthorised packaged drinking water units and ice units and also to prevent companies from unauthorised distribution of polluted water and ice bars in the State of Kerala.

2. The learned counsel for the petitioner contended that unauthorised packaged drinking water distribution existed in various places in the State and it is running as a cottage industry in the State. Those industrial units are collecting the drinking water from the polluted river, pond etc. It is also contended that those units are running without licence from the concerned authorities like Ground Water Authority, Bureau of Indian Standards, Health Department etc., that they release adulterated or substandard water to the market, and that it will cause dangerous health hazardous to the inhabitants. According to the petitioner, it is against the Bureau of Indian Standards Act, 1989.

3. It is also contended that the packaged drinking water could not be

manufactured, sold or exhibited for sale without ISI Standard mark, and BIS Certification mark was mandatory under the Prevention of Food Adulteration Rules, 1955. According to the petitioner, it is highly necessary that the unauthorized water distribution should strictly be made under the control of the Government, and the State Health authorities are responsible for curtailing such manufacturers. It is also contended that there are 106 packaged drinking water plants in Kerala and the Government is again taking steps to give licence to 20 more plants and that the majority of units are running without any valid licence from the concerned authorities; that the units distribute low quality ice bars and the same are used by the wayside shopkeepers for making 'kulukki sarbath', which may cause serious diseases to human beings in future.

4. Without the Government standard mark, the ice bars and water are being distributed in bottles all over Kerala and those units are gradually developing as a cottage industry. As a result, the people are infected by serious diseases and it will be a threat to the health of the nearby inhabitants and also would create various ecological problems. But, the concerned authorities are not taking any action against this exploitation of companies. Hence this writ petition seeking the following reliefs:

1. A writ in the nature of mandamus or any other writ, direction or

order commanding the respondents to verify the licence of unauthorized packaged drinking water units in the State and refuse the licence of this unauthorized units in Kerala State.

2. A writ in the nature of mandamus or any other writ, direction or order commanding the respondents to grant licence for distributing packaged drinking water units only after getting the ISI Mark and number according to the provision;
3. A writ in the nature of mandamus or any other writ, direction or order commanding the respondents to ban the entire packaged drinking water units and ice plants which are running without licence from the concerned authorities in the State of Kerala, especially the districts like Kottayam and Pathanamthitta.
4. A writ in the nature of mandamus or any other writ, direction or order commanding the respondents to ban the sale of unhealthy juice 'Kulukki Sarbath' in the State of Kerala.

5. We have heard the learned counsel on both sides, and perused the pleadings and materials on record.

6. In pursuance to the directions issued by this Court on 08.02.2021 and 22.02.2021 to file a consolidated statement of facts/counter affidavit, setting out the action taken with reference to the prayers sought for, Sri. Surin George Ipe, the learned Special Government Pleader, has filed a statement setting out the details and producing the list showing the banning of packaged drinking water units in various districts across the State of Kerala.

7. In the statement, it is stated that no packaged drinking water units and ice manufacturing units are functioning in the State without a valid FSSAI licence and BIS certification and that stringent actions are initiated against the offenders in accordance with the Food Safety Standards Act, 2006. Food Safety Department ensures the quality of potable water supplied. Packaged drinking water includes water supplied in huge tankers also. In order to ensure quality, special squads are constituted in all districts across the State, in addition to the routine inspection of Food Safety Officers. Those inspections ensure that the operators are having a FSSAI licence and that BIS certification and hygienic conditions are followed for the manufacturing and distribution of packaged drinking water as provided in the 4th schedule of Food Safety Rules, 2011.

8. It is also stated 'No Objection Certificate' for drinking water bottle plants is granted in the State by the Ground Water Authority. The quality assurance comes under the purview of Bureau of Indian Standards (BIS), the 6th respondent and Food Safety and Standard Act, 2006 and every food business operators shall have a valid licence and registration for conducting food business. It is mandatory to have a FSSAI licence for packaged drinking water units. In order to have

FSSAI licence, BIS certificate from Bureau of Indian Standards is mandatory. The Food Safety Department ensures that no packaged drinking water units are functioning in the State without a valid licence from the Food Safety Authority under the Food Safety Standard Act, 2006. The Food Safety Department issues licences for packaged drinking water units only if they have certification from the 6th respondent, the Bureau of Indian Standards.

9. The Food Safety and Standards Act, 2006, which came into force with effect from 05.08.2011, consolidate the law relating to the food and establishment of Food Safety and Standards Authority by laying down scientifically based standards for food articles and also regulates their manufactures, sale, distribution and import in order to ensure the availability of safe and wholesome food for human consumption.

10. It is further stated that the Food Safety Licence Officers regularly inspect packaged drinking water units and collect statutory samples of water and analyse the same through Government Analytical Laboratory. After the analysis, whenever the sample found to be unsafe, substandard and misbranded, the Food Safety Department issues orders banning those brands of packaged drinking water and

will issue prohibitory orders for closing down such manufacturing units. Necessary penal actions are also taken against those offenders as provided under the provisions of Food Safety and Standards Act, 2006. A number of cases are pending before the jurisdictional Judicial Magistrate Courts and also Sub Divisional Magistrate Courts across the State. Annexure R4(a) is the list showing the banning of packaged drinking water units in various districts across the State of Kerala, which reads thus:

Sl. No.	District	Ban Order No. and Date	Product Details
1	Thiruvananthapuram	1/PS/2020-21 dated 14.10.2020	McDowell's No.1, M/s Varuna Aqua Products Pvt Ltd., Plt No. 4, 3, Kinfra Industrial Park, Opp. St. Xaviers College, Thumba
2	Kollam	1381/2019/ACFS KLM dated 17.06.2019	Apple Valley Packaged Drinking water from M/s Mather Water Technologies & bottling plant, Kollam

		1951/2019/ACFS KLM dated 30.07.2019	Valley mist Packaged Drinking water - M/s Hilto India Beverages, Kollam
		1873/2018/ACFS KLM dated 13.12.2018	Sal sabeel Packaged Drinking water - M/s Choice Soda and Mineral, Kollam
		1631/2019/ACFS KLM dated 01.07.2019	Sal sabeel Packaged Drinking water - M/s Choice Soda and Mineral, Kollam
		2260/19/ACFS KLM dated 18.12.2019	Aqua Rein Packaged drinking water - M/s Veega Industries, Kollam
3	Pathanamthitta	960/2019/ACFS/ PTA dated 13.08.2019 (Suspension of License)	Aqua Fine Packaged Drinking Water -Sukhar Industries, Pathanamthitta
		1561/19/ACFS/K TM dated 30.07.2019	Sukhar Industries, Pathanamthitta
4	Kottayam	1561/19/ACFS/K TM dated 30.07.2019	McDowell's No. 1 Packaged Drinking Water S&S Food Industries

		1322/19/ACFS/K TM dated 29.06.2019	Aqua Green Packaged Drinking Water- M/s Pentas Agua
5	Thrissur	01/2020/PROSE CUTION/ACFS/T SR dated 05.08.2020	A-one Packaged Drinking Water - Blue Valley Aqua Minerals
6	Palakkad	B1- 1661/19/ACFS/P KD dated 27.08.2019	Elita Packaged Drinking Water and Aqua Violet Packaged Drinking Water Sal Sabeel Minerals and everages

11. It is further stated that if on analysis a food article is found unsafe, the manufacturer, distributor and the sellers are liable to be punished with imprisonment under Section 59 of the Food Safety Standards Act, 2006. In the case of substandard and misbranded food, its manufacture, distributor and sellers are liable to be punished with fine upto Rs.5 lakhs and Rs.3 lakhs respectively as stipulated under Sections 51 and 52 of the Food Safety and Standards Act, 2006.

12. Further, the Commissioner of Food Safety is taking stringent actions against those manufactures, distributors and sellers of packaged drinking water, who violate the provisions contained in the

Act, Rules and Regulations made thereunder. Orders were issued to close such units in various districts and had initiated prosecution action against those units. As regards ice manufacturing units across the State, standards prescribed under the Food Safety and Standard (Food Products Standard and Food Additives) Regulation, 2011 have to be followed and ice could be prepared only from potable water. The Food Safety Department is making regular inspections in ice manufacturing units and ensures the quality of ice preparing in such units. Stringent actions are taken against the manufactures, distributors and sellers who violate the principles of Food Safety and Standards Act, 2006. It is also pointed out that the Food Safety Commissioner is vigilant in ensuring that the ice manufacturing units are being functioned in conformity with the standards.

13. We have evaluated the rival submissions made across the Bar and taking into account the steps that are taken to prevent the illegal functioning of the packaged drinking water units, it is only appropriate that the writ petition is disposed of with suitable directions, especially due to the fact that the reliefs sought for in the writ petition are general in nature. The Bureau of Indian Standards, namely the 6th respondent, has clearly stated that it was making enquiries and taking

steps against those industries which are not functioning in the field in question without securing the ISI marks and those units which are using the ISI marks unauthorisedly.

14. The report submitted by the State Government also shows that steps have been taken by the Food Standards Authority of India under the Food Safety Act, since water is a food. Anyhow, the statutory authorities under the respective statutes are duty bound to take periodical inspections in order to ascertain as to whether any units are functioning without securing consent/permit/licence from the appropriate statutory authorities. Therefore, the writ petition is disposed of directing the respondents to ensure that unauthorised drinking water units are not functioning in the State and that the packaged drinking water units are functioning with licences and other permits and undertaking all precautions in accordance with law so as to meet up with the standards prescribed under law. The State Government shall also ensure that the low quality ice is not distributed by any of the manufacturing units so as to affect the public health. It is also directed that while granting licence to any new packaged drinking water units, necessary directions shall be issued to maintain the standards prescribed under the respective statutes and to ensure

that such units starts functioning only after securing permits/clearances/consents from the respective statutory authorities.

Writ petition is disposed of accordingly.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | P1. TRUE COPY OF THE ILLEGAL PACKAGED DRINKING WATER'S LABEL NAMELY 'KAIRALI AGUA'. |
| EXHIBIT P2 | P2. TRUE COPY OF THE NAME ILLEGAL PACKAGED DRINKING WATER COMPANIES SUBMITTED BY THE PETITIONER. |
| EXHIBIT P3 | P3. TRUE COPY OF THE LABEL OF CERTIFIED DRINKING WATER NAMELY 'AQUAFINA'. |

RESPONDENTS' EXHIBITS:

EXT.R6(a): TRUE COPY OF THE JUDGMENT DATED 14.01.2016 IN C.C. NO. 103 OF 2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, RAMANKERI.

EXT.R6(b): TRUE COPY OF THE COMMUNICATION BIS/KOCHI/FSSA DATED 16.06.2015.

ANNEXURE R4(a): TRUE COPY OF THE LIST CONTAINING BANNING OF PACKAGED DRINKING WATER UNITS IN VARIOUS DISTRICTS ACROSS STATE OF KERALA.

/True Copy/

PS To Judge.