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In the High Court of Judicature for Rajasthan  
Jaipur Bench Jaipur

3105

D.B. Civil Writ Petition No...../2003

Santosh Mittal ~~Do~~ Shri Noranmal Mittal By Caste Mittal (Treasury)  
on behalf of Youth Welfare Society, Mittal Colony, Sodala, Jaipur.

Petitioner

VERSUS

- ✓ 1. The State of Rajasthan through Secretary Food & Supply Govt. Secretariat, Jaipur
- ✓ 2. Hindustan Coca Cola Beverage Ltd. Kaladera. ✓
- P.3. Jai Drinks Pvt. Ltd. Pepsi, Jaipur. JNL MARG, MALVIYA NAGAR, JAIPUR ✓
- P.4. Varun Beverages Pvt. Ltd., Jodhpur. ✓
- P.5. Prem Drink Centre, Jaipur, 29, JHORI BAZAR, JPR. ✓

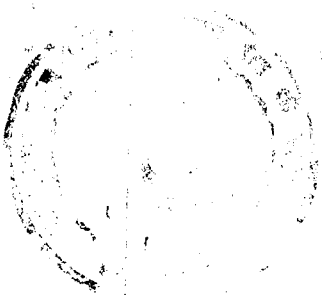
Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA.

AND

IN THE MATTER OF ARTICLE 21 OF THE  
CONSTITUTION OF INDIA.

To



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20-130-04

In The High Court Of Judicature For Rajasthan  
Bench At Jaipur

1. CW 3105/2003 Santosh Mittal v. State of Rajasthan & others
2. CW 4742/2003 Mrs. Manju Surana v. State of Rajasthan & others
3. CW 5867/2003 Ram Singh v. Union of India & others
4. CW 4741/2003 Niraj Sharma v. State of Rajasthan & another

Date of decision

October 8, 2004

**REPORTABLE**

Present

Hon'ble Mr. Anil Dev Singh, CJ.

Hon'ble Mr. KS Rathore, J.

Mrs. Swati Bhati, with Mr. Neeraj Sharma,

....for petitioners

Mr. Sandeep Sethi, Sr. Advocate, with Ms. Ila Kapoor, and  
Mr. Rajeev Surana,

Mr. Bajrang Lal Sharma, Sr. Advocate, with Mr. Manish Sharma

Mr. Harshwardhan Nandwana, Addl. GA, for State

Mr. BC Chirania, Addl. Standing Counsel, with Mr. Ravi Chirania,  
for the Union of India

....for respondents

(Per Hon'ble Mr. Justice Anil Dev Singh, CJ.)

The petitioners' claim that the carbonated drinks manufactured by PepsiCo and Coca-Cola are contaminated and laced with pesticides, which are dangerous to human life. The petitioners seek a ban on their sale and use by the public at large. It is also the case

of the petitioners that the drinks manufactured by these companies contain suspended impurities. In order to substantiate their point they had presented before us few bottles of soft drinks alleged to have been manufactured by PepsiCo and Coca-Cola, which on ocular examination show presence of foreign material. But that we need to ignore because the issue cannot be conclusively determined in the absence of the evidence of an expert. It has been argued in these petitions by the learned counsel for the petitioners that the manufacturers ought to make a complete and full disclosure of the composition and contents of their products including the presence, if any, of the pesticides and chemicals therein, so that the consumers can make an informed choice before buying, selecting and consuming the products.

The learned counsel for the respondent companies submitted that the companies are not required under law, to disclose the presence or absence of pesticides in their products. It is also submitted that the products contain 90% water, 9.0% sugar and 0.1% preservatives. According to them in case water contains pesticides, they cannot be blamed for it. It is claimed and asserted by them that the water used for manufacturing the soft drinks by them is subjected to reverse osmosis process and certain other scientific procedures.

This is being done to purify the water.' It was also argued that their products meet the European standards of quality and purity.

They submitted that it is not relevant to divulge information with regard to the presence or absence of DDT from the beverages. They wondered as to how the information would be relevant or material or of any significance to the consumers. Both the counsel for Coca-Cola and PepsiCo submitted that small traces of DDT and other pesticides are not harmful to the health of the consumers. It was contended on behalf of PepsiCo that the water used for manufacturing carbonated beverages by the company in the State of Rajasthan is drawn from deep wells with a view to obviate mixing of any undesirable element or chemical in it.

We have considered the submissions of the learned counsel for the parties.

On August 5, 2003, the Director, Centre for Science and Environment (for short 'CSE') an NGO based in Delhi, made public a report of the analysis of pesticide residues in soft drinks. Both electronic and print media covered this report prominently. In the report it was stated that CSE found pesticide residues in the samples of twelve soft drink brands procured by it from open market in Delhi. As per the report of the CSE, thirty-six samples of twelve

different brands of the aforesaid soft drinks were tested, from which it was concluded as follows: -

“Out of the 16 organochlorines, 12 organophosphorus and 4 synthetic pyrethroids analysed soft drink samples. Lindane, DDT and its metabolites, Malathion and Chlorpyrifos were most commonly found in 36 soft drink samples tested.

Lindane (Hexachlorocyclohexane), a potent carcinogen was detected in 100% of the samples analysed.

The average concentration detected in all the samples were 0.0021 mg/L, which is 21 times higher than the EEC limit for individual pesticides. Lindane is the most toxic of all the isomers of HCH and has powerful insecticidal properties and is used for the control of insects of field crops and pests in houses.

DDT (dichlorodiphenyltrichloroethane) was detected in 81% of the samples analysed. The average concentration of total DDT (DDT+DDD+DDE) in all the samples was 0.0015 mg/L, which is 15 times higher than the EEC limit.

Chlorpyrifos, a suspected neuroteratogen was detected in 100% of the 36 samples analysed with an average concentration of 0.0042 mg/L of chlorpyrifos which is 42 times higher than the prescribed EEC limit.

Malathion was present in 97% of the samples analysed with an average concentration of malathion (0.0087 mg/L) which is 87 times higher than the EEC limit. Malathion was present in all samples except one sample of Sprite (BN 787).

Synthetic Pyrethroide - Out of 4 synthetic pesticides-cypermethrin, deltamethrin, fenvalerate and permethrin analysed, none was detected in any of the samples.

The average concentration of total organochlorines was 0.0038 mg/L, that of total organophosphorus was 0.0219 mg/L and the level of total pesticides detected was 0.0168 mg/L, which is 34 times higher than the total EEC limit. The variation in different brands could be due to the different ingredients present in different brands, composition and pH.

No pesticide residues were detected in the Coca-Cola and Pepsi samples from USA manufactured by the same multinationals.”

Therefore, it is apparent that the samples of the said soft drinks contained pesticides. It is also significant that in the Coca-Cola and

Pepsi samples received from USA, no pesticide residues were detected though they were manufactured by the same multinationals.

The aforesaid report refers to the baneful effect of the DDT and its metabolites. The effect, as noted in the report, is as follows: -

"DDT (dichlorodiphenyltrichloroethane) and its metabolites were detected in 81% of the soft drink samples. They have been linked to altered sexual development in various species, to a decrease semen quality and to increased risk of breast cancer in women. (Sharpe RM. Et a, 1993; Carlsen E et a, 1992; Stone R et a, 1994). DDT and its metabolites have also been shown to mimic estrogen, binding to and activating the estrogen receptors (ER's) thereby often producing estrogen like effects (Jaga K, 2000). They may alter a number of harmful estrogen-regulated health effects in humans such as breast cancer (Cocce P et a, 2002), spontaneous abortior (Korrick sA et a', 2001) reduced bone mineral density (Bread et a', 2000). DDT and its metabolites because of their lipophilicities and long half lives accumulate in the food chain. Their weak oestrogenic effects may result from altered metabolism and competition for binding to cytosolid and nuclear receptors of steroid hormones. (Levine R et a, 1991).

DDT reportedly induces cancer in animals, mimics estrogen activity, induces antiandrogen effects, and impairs Natural Killer (NK) cells and T lymphocyte responses. Occupational exposure to insecticides resulted in frequent infections and immunological abnormalities. DDT, dichlorodiphenyldichloroethylene (DDE), and dichlorodiphenyldichloroethane (DDD) in blood levels have been associated with several immune parameters in patients occupationally exposed to insecticides. The majority of 49 patients who worked as farmers or farmhands in the former German Democratic Republic, were contaminated with more than 1<sup>st</sup> chemical - most commonly DDE, PCBs, and HCB and 80% of them had been exposed for more than 20 years (Daniel et a, 2002).

Comparison of blood levels of HCB and total DDT in 159 women with breast cancer and 250 presumably healthy showed that mean levels of total DDT and HCB were significantly higher for breast cancer patients than for controls. No differences in serum levels of total DDT or HCB were found between estrogen receptor positive and estrogen receptor negative patients with breast cancer which implies that persistent pollutants may occur in higher concentration in blood samples from breast cancer patients from controls (Charlier C et a, 2003).

There are mixture effects even when each mixture component is present at concentrations that individually produces insignificant effects. Lifetime treatment of mice with DDT induced liver tumours in a dose related manner and the tumors included overtly metastasizing hepatoblastomas (Hoyer AP et a', 1998). Main metabolites of DDT (pp' DDE and pp' DDD) are both carcinogenic. Exposure to DDE resulted in high incidence of liver tumors in both male and female mice. The combined exposure to DDE and DDD resulted

in a marked increase and early appearance of liver tumors in both sexes (Turosov VS et a ; 1973).

Mixture of 4 organochlorines (op' DDT, pp' DDE 1 -BHC and pp' DDT) acted together to produce proliferative effects in MCF-7 human breast cancer cells and the combined effect was additive (Gertrudis C et a 2001). A study suggests that exposure to a mixture of DDT, HCH and endosulfan and decreased fertility in males, an increase in birth defects and in neonatal deaths (Rupa DS, 1991). Detoxification processes both in humans and animals involve conversion of DDT to less toxic acetate; little is known about variations from person to person in these detoxification mechanisms, and even less about intermediate metabolism concerned. Regardless of detoxification mechanisms, DDT is stored cumulatively in body fat and excretion is extremely slow even after intake ceases (Smith MI, 1946)."

After the report received by the Government of India, a Joint Parliamentary Committee was constituted to investigate the issue. The Joint Parliamentary Committee was set-up with the following terms of reference: -

- a. Whether the recent finds of the Centre for Science and Environment regarding pesticide residues in soft drinks are correct or not.
- b. To suggest criteria for evolving suitable safety standards for soft drinks, fruit juice and other beverages where water is the main constituent."

The Joint Parliamentary Committee, on going into the matter, came to the conclusion that the findings of the CSE are correct with regard to the presence of pesticide residues in carbonated water in respect of three samples each of twelve brand products of PepsiCo and Coca-cola analyzed by them. The conclusions and recommendations of the Joint Parliamentary Committee read as follows:

1-89 As regards the first terms of reference of the Committee, the Committee would like to divide it in two components, the first one is the qualitative

(detection and identification) aspect and the second is the quantitative one (estimation and confirmation). So far as qualitative aspect is concerned, the Committee are of the view that the CSE findings are correct on the presence of pesticide residues in carbonated water in respect of the three samples each of 12 brand products of Pepsico and Coca-cola analyzed by them. CSE tested 36 samples for 16 organochlorine pesticides, 12 organo phosphorus pesticides and 4 synthetic pyrethroids, which together constitute a list of 32 most commonly used pesticides in India. CSE detected the gamma isomer (Lindane) in all the 36 samples and three other isomers of hexachlorocyclohexane (commonly called HCH or BHC) in some of the samples at varying levels. DDT and its metabolites were detected in 29 out of 36 samples. Among the organo phosphorus ones, chlorpyrifos was detected in all the 36 samples in varying concentrations and malathion in 35 out of the 36 samples at different levels. None of the four synthetic pyrethroids was found in any of the 36 samples.

1.90 The Committee have however, noted that 19 of the 36 samples came from one bottling unit in Jaipur, 15 from one bottling unit in Hapur Tehsil Ghaziabad, one from a bottling unit in Jodhpur and one from bottling unit in Mathura.

1.91 CFL-CFTRI (Central Food Laboratory at Central Food Technological Research Institute, Mysore) and CFT, Kolkata (Central Food Laboratory, Kolkata) analyzed independently samples of the same 12 brands collected and sent to them by Directorate General of Health Services. Both laboratories also detected the presence of organochlorine and organophosphorus pesticide residues. The presence of pesticide residues, therefore, is a common scientific finding of all the three laboratories. The Committee would, therefore, conclude that CSE stands corroborated on its finding pesticide residues in the carbonated water. So far as non-detection of malathion by the two laboratories is concerned, the Committee attribute the same to the variations in different batch numbers, manufacturing locations and also the dates of collection and analysis. The absence of malathion in the Mysore and Kolkata analysis have been scientifically explained by CFTRI. GSMS method has been applied to confirm the absence of malathion, reinforced by spiking samples and analysis. The Committee also note that the presence of malathion was also reported by the laboratory under the Central Pollution Control Board and Shriram laboratory (Bangalore) and hence out of the five laboratories three had detected malathion in the samples tested by them.

1.92 With regard to the quantitative aspect, the results of CSE on the one hand and CFL-CFTRI and CFL, Kolkata on the other vary widely. The Committee have no hesitation in admitting that as explained by different experts who deposed before the Committee, variations in an analytical research is a well known factor. It can arise due to host of other factors such as differences in (a) the manufacturing locations, (b) date of manufacture, (c) batch number of products, (d) temperature conditions of storage at the stocking place/retail end, (e) the laboratories due to the differences in the analytical techniques/procedures, (f) structural stability and (g) characteristics of the chemical molecule in question etc. In the instant case, there have undoubtedly been variations in the samples which had different batch numbers and also were manufactured at different locations. Though all the three laboratories have employed the same analytical procedure namely US Environmental Protection

Agency Method 8081A for organochlorine and 8141A for organophosphorus pesticide, differences have been noticed in the way the procedure was performed as enumerated in Annexure X, with the result that the differences could be significant.

1.93 Moreover, CFL of CFTRI was able to apply GC Mass spectrometry combination for confirmation of its results – the importance of which has been highlighted by a number of experts who appeared before the Committee. Besides, though CSE has reported that the concentration level of pesticide identified in carbonated water was far in excess of the limit laid down in EU directives, however, the Committee are of the view that comparing residue level in any article of food on a percentage basis could have been avoided because EU norms were not adopted at that point of time in our country. The results of CFL, Mysore and CFL, Kolkata however come closer to each other in terms of the number of times the total pesticides level exceeded the EU limit, in the specific batches. For the results to be compared in the quantitative terms, all the three laboratories should have adopted the same protocol in the design, conduct and interpretation of results of the study. Besides, CFL-CFTRI and CFL Kolkata are among the four laboratories established under the Prevention of Food Adulteration Act, 1954 with a mandate to carry out the functions entrusted under the PFA Act, as amended and notified on 30 December, 2002. The broad jurisdiction of these four laboratories has been notified under the PFA Rules, 1955. These are, therefore, approved and authorized laboratories to conduct food analysis including beverages and packaged drinking water. In addition CFTRI under which CFL functions has been accredited by NABL for both chemical and biological testing. CFTRI is also an ISO/9000:2000 certified organization. On the other hand CSE has not cited any accreditation from NABL or certification from ISO (International Standards Organization) to support its analytical competence. This aspect was highlighted by several organizations in their evidence and presentations before the Committee particularly CII, FICCI, ICMR and CPCB. CFL, Kolkata also does not have laboratory and gives credence for data acceptance – a fact which has been recognized internationally also.

1.94 The European Union in fact has a long list of guidelines and directives concerning the performance of analytical methods and interpretation of results. (Council Directive 96/23 EC). The importance of adopting confirmatory methods for arriving at the authenticity of the results is equally important, since as per the EU Directive also confirmatory methods for organic residues or contaminants provide information on the chemical structure of the analyte. Consequently, methods based only on chromatographic analysis without the use of spectrometric detection are not suitable on their own for use as confirmatory methods. The fact however remains that such a test was not done by CSE. Moreover, it would have been appropriate if the evaluation of tests was conducted on the same samples by two or more laboratories in accordance with the predetermined conditions. The Committee note that although the pesticide residues were found in all the test reports with quantitative variations, however, while citing EU norms/limits for pesticides, the CSE adopted the USEPA method for analytical purposes. The Committee feel that CSE could have adopted the EU specified methodology to reach a final conclusion of pesticide residues and its follow up.

1.95 Though the results of the Central Pollution Control Board which had conducted an independent testing through their laboratory, come closer to the findings of CFL-CFTRI and CFL, Kolkata, the percentage reported by Shriram laboratory which had tested only one sample each of Coca Cola and Pepsi is quite high. In view of the fact that these laboratories also did not test identical samples and the dates of manufacturing as well as locations are different, the quantitative results reported by them cannot be compared.

1.96 The Committee, however, find that the CSE findings are correct on the presence of pesticide residues in carbonated water strictly in respect of the 36 samples of 12 brand names analyzed by them. The Committee also appreciate the whistle blowing act of CSE in alerting the nation to an issue with major implications to food safety, policy formulation, regulatory framework and human and environmental health."

Thus, there is no manner of doubt that the analysis by the CSE and by other laboratories show the presence of pesticides in the samples of branded products of PepsiCo and Coca-Cola.

Mr. Sethi, the learned senior counsel for PepsiCo submitted that negligible traces of pesticide residues have been found in the samples and they are not harmful to the health of the consumers. In respect of his submission he relied upon the opinion of Dr. N.G.K.Karanth, Deputy Director and Head, Food Protectants and Infestation Control, Central Food Technological Research Institute, Mysore, Karnataka. According to him cancer and all other symptoms or maladies can manifest only after hundreds of years of exposure under the constant and consistent conditions detailed in the CSE report and not immediately. But from the report of Dr. Karanth it also appears that taking of anything in large quantities may be bad. He has referred to several examples including the example of

Ayurvedic preparations like 'Asavas', which contains small percentage of ethyl alcohol. In this regard the expert opined as under:-

Example 1 : Mere distilled or deionised water is not so good. If it contains very small quantities of minerals it is good for health. That is the concept of mineral water instead of distilled/deionised/sterile water.

Example 2 : In Ayurvedic preparations such as Asavas – a small percent of ethyl alcohol is present which does not impair health. But then can we say alcohol is good? Certainly not. No doubt it is a killer drink No.1.

Example 3 : Health promoting effects of homeopathy system of medicine is exclusively based on elemental therapy at minute concentration. The roaring multibillion business of elemental therapy in developed countries is the success story of benefits from small concentrations of minerals in elemental therapy. The same is true of Ayurvedic system of Indian Medicine. "A pinch" of minerals in the food is essential. These metal ions form the prosthetic group of many vital enzymes and magnesium ion forms the nucleus of blood hemoglobin. At the same time global worry is mental contamination and pollution of the biosphere. That means contamination is something beyond required level and causes nuisance in the environment – here is the concept of quantity. Elements, minerals and metals are different connotations of the same thing.

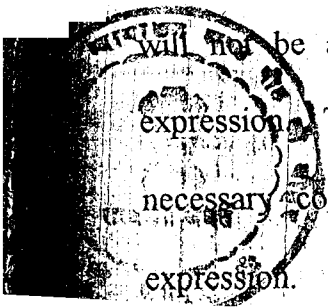
Example 4 : Drinking one or 2 cups of Tea/Coffee a day is stimulatory and is good for a normal healthy person. But every one knows too much is too bad. Again it is the quantity that matters most.

Example 5 : About the pesticide. Does it mean then, a pinch of pesticide in soft drinks is good? The answer is an emphatic "NO". Pesticide residue is not an intentional additive but an incidental unwanted contaminant entering unnoticed from the raw materials to the end product."

As is clear from the above, the expert has tried to illustrate his point by giving number of examples. He has also emphasised that drinking one or two cups of tea or coffee a day is stimulatory and is good for a normal healthy person, but too much of it is too bad. He warns that quantity matters most. From the opinion of Dr. Karanth it can be deduced that large intake of beverages containing pesticides is harmful to health. In example 5 above, he candidly admits that even

a small quantity of pesticide in a soft drink is not good. Therefore, unless the bottle or the container mentions the composition of the carbonated beverage or soft drink, including the presence, if any, of the pesticides and chemicals, on it and the extent thereof, it will not be possible for the consumers to assess and form an informed opinion as to whether they should buy and consume the same and if so, to what extent. We do not wish to comment upon the question as to what quantity of pesticides when consumed can have ill effects on the health of a person. That matter must be left to the experts. The real question, however, is whether or not the consumers should be given the entire information about the contents of the beverages for exercising informed choice. Even though the pesticides may not have been induced by the manufacturers, it appears to us that the consumers have a fundamental right to the full disclosure of the composition and contents of the beverages.

Article 19(1)(a) of the Constitution secures to all citizens freedom of speech and expression, which includes a right to acquire information. Unless a person has a right to receive information, he will not be able to enjoy the right to freedom of speech and expression. The right to receive information and knowledge is a necessary concomitant of the right to freedom of speech and expression.



n Secretary, Ministry of Information & Broadcasting, Govt. of India

& others v. Cricket Association of Bengal & others, (1995) 2 SCC

161, the Supreme Court held that the right to freedom of speech and

expression includes right to impart and receive information. In this

regard the Supreme Court held as follows: -

"36. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression. We may in this connection refer to Article 10 of the European Convention on Human Rights which states as follows:

"10.1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

201. ...The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry..."

In State of U.P. v. Raj Narayan & others, (1975) 4 SCC 428

(para 74) the Supreme Court held that the right to know is derived

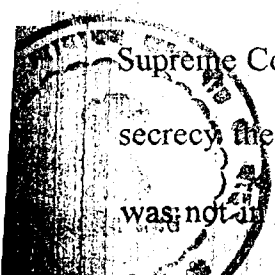
from the concept of freedom of speech and expression. The

Supreme Court did not approve of the tendency to cover with veil of

secrecy the common routine business on the ground that the same

was not in the public interest. In this regard the Court observed as

follows:



"...The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine...."

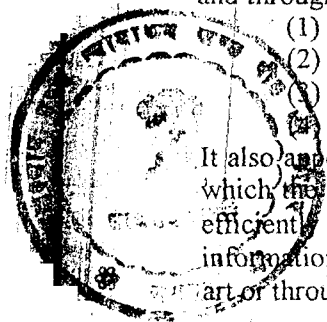
In Indian Express Newspapers (Bombay) Private Ltd. & others v. Union of India & others, (1985) 1 SCC 641, Article 19(1)(a) was liberally interpreted to include the right to circulate one's views by word of mouth or writing or through audio visual devices.

In Association For Democratic Reforms v. Union of India & another, 89 (2001) DLT 291, it was held by a Division Bench of the Delhi High Court that several rights flow from Article 19(1)(a) including right to receive information, and this being so, the State must ensure the availability of the right of the citizen to receive information with regard to the particulars of the candidates standing for elections, so that he can exercise an informed choice for casting his vote. In this regard, the court held as follows: -

"20] Having regard to the decisions cited above, it appears to us that the right of freedom of expression includes several specific rights which are bound together and through which a common string passes. These include:

- (1) Right to voice one's opinion.
- (2) Right to seek information and ideas.
- (3) Right to receive information.
- (4) Right to impart information, etc.

It also appears to us that the State is under an obligation to create conditions in which the aforesaid rights flowing from Article 19(1)(a) can be effectively and efficiently enjoyed by the citizens. Right to seek, receive and impart information can be through word of mouth, in writing or in print, in the form of part or through television, radio, etc."



The Supreme Court in Union of India v. Association For Democratic Reforms & another, (2002) 5 SCC 294, held that right to freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The Supreme Court while holding so, observed as follows: -

"5. The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

"(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The right to receive information has also been given recognition through the international conventions. We may also refer to the European Convention of Human Rights and the International Covenant on Civil and Political Rights. In essence, they provide to the effect that everyone has a right to freedom of expression and this right includes freedom to impart information and ideas of all kinds regardless of the limitations of frontiers either orally, in writing or in print in the form of art or through any other media of his choice.

In Ozair Husain v. Union of India, 101 (2002) DLT 229, the Delhi High Court, having regard to Articles 19, 21 and the conventions, held as follows: -

“11. World has moved towards universalisation of right to freedom of expression. In this context we may refer to Article 10 of the European Convention of Human Rights. Article 10 of the Convention provides that every one has a right to freedom of expression and this right shall include freedom to hold opinions and to receive information and ideas without interference by public authority and regardless of frontiers.

12. Again, Articles 19(1) and 19(2) of the International Covenant on Civil and Political Rights declares that every one shall have the right to hold opinions without interference, and every one shall have the right to freedom of expression, and this right shall include freedom to seek, receive and impart information of ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. It needs to be noted that India is a signatory to the aforesaid convention.

13. It is well settled by several judgments of the Supreme Court that while interpreting constitutional provisions dealing with fundamental rights the Courts must not forget principles embodied in the international conventions and instruments and as far as possible the Courts must give effect to the principles contained in those instruments. In *Apparel Export Promotion Council v. A.K. Chopra*, I (1999) SLT 212 = 2000 (1) All India Service Law Journal 65, the Supreme Court went to the extent of holding that the Courts are under an obligation to give due regard to the international conventions and norms while construing domestic laws, more so when there is no inconsistency between them and the domestic laws. To the same effect is an earlier decision of the Supreme Court in *Vishakha and Ors. v. State of Rajasthan & Ors.*, III (1997) CCR 126 (SC) = (1997) 6 SCC 241.

14. Right to hold opinions and to receive information and ideas without interference embodied in the Covenant is concomitant to the right to freedom of speech and expression which includes right to free flow of information. Since ancient times we have allowed noble thoughts to come from all sides [Rig Veda]. This has helped in forming, building, strengthening, nurturing, replenishing and recreating opinions and beliefs of an individual.

15. Drawing from the aforesaid decisions, effect must be given to the Covenant. Reading Article 19(1)(a) along with the Covenant, it must be recognized that right to freedom of speech and expression includes freedom to seek, receive and impart information of ideas. It seems to us that freedom to hold opinions, ideas, beliefs and freedom of thought, etc., which is also enshrined in Preamble to the Constitution, is part of freedom of speech and expression.

*Consideration of the question with reference to the Article 21 of the Constitution:*

16. Article 21 enshrines right to life and personal liberty. Expressions 'right to life and personal liberty' are compendious terms which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time (see *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295. In *R.P. Limited v. Proprietors, Indian Express Newspapers, Bombay, Pvt. Ltd.*, (1988) 4 SCC 592, (at page 613), the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international

communities are coming together for cooperating in various spheres and they are moving towards global perspectives in various fields including human rights, the expression "liberty" must receive an expanded meaning. The expression cannot be cribbed or confined to mere freedom from bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. In this view of the matter, we have no hesitation in holding that Article 21 grants freedom to an individual to follow and to stick to his opinions, and for pursuing such a course he has right to receive information and also a right to know the ingredients or the constituents of cosmetics, drugs and food products."

Thus, drawing from various decisions of the Supreme Court and the covenants referred to above, it was held that the right to know is a necessary ingredient of participatory democracy and the same springs from Articles 19(1)(a) and 21 of the Constitution.

In People's Union For Civil Liberties & another v. Union of India & others (2004) 2 SCC 476, the Supreme Court reiterated and held to the effect that there exists a relationship or linkage between the right to know and the freedom of speech and expression.

The learned counsel for the respondent companies contended that neither the Prevention of Food Adulteration Act, 1954 nor the Prevention of Food Adulteration Rules, 1955 envisage total exclusion of pesticides from the beverages and soft drinks. It was submitted that the Prevention of Food Adulteration Act, 1954 and the Rules do not prescribe any standard for water. They canvassed that in case water contains pesticide, how the Companies can be responsible for it since pesticide residue is not an intentional additive

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but is an incidental contaminant entering the end product from the raw material. According to them if there is no restriction on the consumption of water containing pesticides, how can there be any restriction on the sale and the consumption of beverages containing pesticides.

The argument does not appeal to us. Insofar as water is concerned, it is a necessity as no one can survive without the same. As regards beverages, they are products of trade and commerce produced by the manufacturers. They are sold for a price. One can survive without carbonated beverages and soft drinks, but none can survive without water. Once a person pays price for a commercial product it must be totally safe. If a carbonated beverage or soft drink is not free from pesticides and chemicals, the consumer must be told that it contains pesticides or chemicals and the extent of their presence must be specified on the product. The sale of the product should not be allowed without disclosing the composition of the product and the presence, if any, of insecticide, pesticide and chemicals. It was submitted that in case such a disclosure is made, there would be panic in the market and the business will dwindle. The contention cannot be a ground to give a go-by to Articles 19(1)(a) and 21 of the Constitution for the sake of business of the manufacturers. It is not difficult to imagine why the respondent

companies want to keep the question of the presence of pesticides in carbonated beverages and soft drinks under wraps. It is only because of the commercial interest that such disclosure is being withheld from the public and the consumers. Commercial interests are subservient to the fundamental rights. The manufacturers cannot be allowed to keep the contents of the carbonated beverages and soft drinks under veil of secrecy. Such secrecy cannot be legitimately allowed and the veil of secrecy must be lifted for public knowledge and information in the public interest, so that they can make an informed choice for the purposes of buying the product.

In view of the aforesaid discussion we hold that in consonance with the spirit and content of Articles 19(1)(a) and 21 of the Constitution the manufacturers of beverages namely Pepsi-Cola & Coca-Cola and other manufacturers of beverages and soft drinks, are bound to clearly specify on the bottle or package containing the carbonated beverage or soft drink, as the case may be, or on a label or a wrapper wrapped around it, the details of its composition & nature and quantity of pesticides and chemicals, if any, present therein.

Accordingly, the writ petitions are allowed. We direct the respondent companies namely PepsiCo and Coca-Cola, and all other manufacturers of carbonated beverages and soft drinks, to disclose

the composition and contents of the products, including the presence, if any, of the pesticides and chemicals, on the bottle, package or container, as the case may be.

With the aforesaid directions and observations, the writ petitions are disposed of.

K. S. Rathore  
(KS Rathore) J.

Anil Dev Singh  
(Anil Dev Singh) C.J.

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