IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Writs of *Certiorari* & *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0073/2019

1. Raigam Marketing Services (Pvt) Ltd.
   F28, 1st Floor,
   Lucky Plaza,
   Colombo 3.

2. Dr. Ravindranath Liyanage.
   Raigam Marketing Services (Pvt) Ltd,
   277, Koswatte,
   Kiriwattuduwa.

Petitioners

1. Dr. Anil Jasinghe.
   Chief Food Authority.
   (Director General of Health Services)
   Ministry of Health, Nutrition and
   Indigenous Medicine,
   385, Rev. Baddegama Wimalawansa
   Mawatha,
   Colombo 10.

1A. Dr. Asela Gunawardena.
   Chief Food Authority.
   (Director General of Health Services)
   Ministry of Health, Nutrition and
   Indigenous Medicine.
   385, Rev. Baddegama Wimalawansa
   Mawatha,
   Colombo 10.

2. Dr. Sapumal Dhanapala.
Chairman (Former).
Food Labelling and Advertising Sub Committee,
Food Control Administration Unit,
Ministry of Health and Indigenous Medicine,
7th Floor,
464, T. B. Jaya Mawatha,
Colombo 10.

2A. V. T. S. K. Siriwardhana.
Chairman,
Food Labelling and Advertising Sub Committee,
Food Control Administration Unit,
Ministry of Health and Indigenous Medicine,
7th Floor,
464, T. B. Jaya Mawatha,
Colombo 10.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: A. S. M. Perera, P.C. with Ms. Chathunika Vitharana for the Petitioners.

Ms. Y. Fernando, DSG with S. Davis, SC for the Respondents.

Written Submissions on: 02.01.2022 by the Petitioners
17.01.2022 by the Respondents

Decided on: 31.01.2022

MOHAMMED LAFFAR, J.

The main reliefs sought by the Petitioners in this Application, *inter alia*, are remedies, by way of a Writ of Prohibition, preventing the Respondents from taking any action to recall the said product ("දෙවැනි බැත.") from the market and/or interfering with the airing of the advertisements, and to issue a Writ of Certiorari quashing the decision (P13) made by the Respondents.

At the outset, the Petitioners are engaged in the trade of food manufacturing, primarily manufacturing rice flour noodles. The Petitioners claim that they have been prejudiced by the decision of the 2nd Respondent, namely the Chairman of the Food Labelling and Advertising Sub Committee, in the letter marked P13 which posits that the trade name, දෙවැනි බැත, of the Petitioner Company's product of rice noodles, misleads the public and thereby should be changed.

Prior to addressing the question on whether the term දෙවැනි බැත could be used as the trade name in the sale of the product, as it is purported to be misleading, one must first familiarize himself with the sequence of facts prior to the arrival of the said decision by the Respondents.

The Petitioners on 26-10-2015 received a letter (marked P6) from the 2nd Respondent, stating that there are concerns raised with regard to the Petitioner Company's product of rice noodles, namely දෙවැනි බත, and to submit a justification in relation to the use of the trade name. The reason for concern was provided for in a letter dated 14-12-2015 (marked P6c) which states that

“The term " දෙවැනි බත " misleads the people as it is an alternative for rice. Therefore, remove that phrase as soon as possible from all of your communication.”

Subsequently the 2nd Petitioner, via fax, received a request on 24-01-2016 to attend a meeting, by the 2nd Respondent Committee, to discuss the usage of the term දෙවැනි බත as the trade name. As the 2nd Petitioner was unable to attend the meeting, an alternative date was sought (P6e).

The Petitioners receiving a letter on 02-05-2016 (P7) was requested to, *inter alia*, recall all products in the market with the alleged misleading title. Seeking an opportunity to be heard, and at the request of the Petitioners, the Petitioners were invited to partake in a meeting on 27-07-2016, to which was attended by two senior officials of the 1st Petitioner Company. It was posited during the meeting, by the Petitioners, that they deny that they have violated any Regulation made under the Food Act, and further deny the averments stipulated in letter marked P7, which informed the Petitioner that the product of the Company cannot be described as a substitute for rice or “දෙවැනි බත”, which is in contravention of Regulation 13(6) of the Food (Labelling and Advertising) Regulation 2005. Being aggrieved by the decision stipulated in P7, the Petitioners filed CA Writ Application No.163/2016. On the direction of their Lordships of the Court of Appeal, the matter was to be adjusted in a manner acceptable to all parties. Thereby in response, the Petitioners changed the product name from *දෙවැනි බත* to දෙවැනි බැත. However, the change was met with objections by the Respondent Committee via a letter dated 24-10-2016 (P10) as such use of the term දෙවැනි බැත was not approved by the said Committee. Reasons against the use of the term දෙවැනි බැත was provided

for in a letter dated 17-09-2018 by the 2nd Respondent as "it misleads the consumers" (P13).

In response to such allegations by the Petitioners, the Respondents in their statement of objections posit that they were compelled to issue the letter marked P13 as the Petitioners were in constant violation of the decision made by the Respondent Committee through the usage of the term දෙවැනි බැත. Denial on the use of the said term was decided at the Committee meeting dated 09.08.2016 marked 1R3, which reads thus;

> "03. *Writ application No 163/2016 by at the Court of appeal: It was communicated to the committee that a hearing was given to "Raigam" on this matter on the directive of the Attorney General. Committee decided that the name "Devani Betha" (දෙවැනි බැත) cannot be allowed as it sounds very similar to earlier name and due to other reasons expressed. However, committee agreed to give a grace period of 3 months to change the name."*

It is further submitted that the trade name of food products must comply *inter alia*, with the provisions of the Food Act, No. 26 of 1980, Food Standards Regulation 1989, Food (Labelling and Advertising) Regulation 2005 and the SLS standards for food products. The Food Standard Regulation for Rice is contained in Gazette extraordinary No: 637/18 and the SLS specification, for Rice Noodles, no. 858:1989 has been adopted as the Standard for the said product by gazette extraordinary No 1838/12. Documents marked as 1R4and 1R5 therefore, prescribe what can respectively be labelled as Rice or Rice Noodles in the domestic market.

The Respondents aver that the term දෙවැනි බැත infers 'Rice' or a substitute for rice. Therefore, and thereby the Respondents have obtained

a clarification in this regard from the Sinhala Dictionary Compilation Institute as to the linguistics of the term දෙවැනි බැත (IR6). Thus, it is averred that using the said term to describe the Petitioners product, which is a Rice Noodle, clearly misleads the public and falls foul of Regulation Nos. 4 (1), 12 and 13(2) of the Food (Labelling and Advertising) Regulation 2005.

Returning to the primary query on whether the term දෙවැනි බැත could be used to describe the product, in referring to the report compiled by the Sinhala Dictionary Compilation Institute, the word බැත, in the indigenous language of paddy culture denotes the idea of rice in the husk which is obtained after the rice stalks are crushed, or in general terms, paddy. Although, the use of the term දෙවැනි බැත does not directly imply that it is rice, it still indirectly imputes the idea that it could be substituted for rice (බත) and it is also similar, though not the same, to the previous trade name and also in meaning.

The use of the term which denotes a substitution for rice, for a product which should be classified as rice noodles, is misleading to the public and creates a false impression. Thus, the Petitioners cannot expect themselves to be absolved from liability by simply changing the word to another word which still denotes the same meaning, indirectly.

Thus, there must be a differentiation between the products of noodles and rice. One cannot liken the two products, through the use of misleading words, to be the same. The use of දෙවැනි බැත imputes the idea that it is similar to rice whilst in reality there is a clear differentiation between the two products, may it be visually or even nutritionally as claimed by the

Respondents in the food composition comparative analysis report marked 1R8. One could draw a simple analogy differentiating a lake and a river, although they both contain the common ingredient of water, in reality, they are two different bodies of water. Similarly, the mere usage of rice flour in manufacturing rice noodles cannot render the noodles to be asserted as a substitute to rice. Thus, I view that බැත and බත denote the same meaning in this context, which in turn misleads the purchasers or consumers of such food.

With due regard to the relevant provisions of the Regulations as well as to the primary meanings of the words බැත and බත, I view that the usage of දෙවැනි බැත as the trade name to describe rice noodles, acts in contrary to Regulation No. 4 (1) b, of the Food (labelling and Advertising) Regulation 2005 which states;

> *"4. (1) The following declarations shall be on the main panel of the package or container-*
>
> *(a) common name of the contents, at least in any two of the three languages in bold face type;*
>
> *(b)* ***brand or trade name if any, in any one or more of the three languages in a manner that shall not mislead any person:***
>
> *(c) the net contents of the package or container expressed by the international symbols "g' or *kg' in the case of solids, and "ml' or 'I' in the case of liquids and, if packaged in liquid medium, the net drained weight expressed as *g' or *kg"*

Regulation No. 12 of the Food (labelling and Advertising) Regulation 2005, which states;

"12. No label or advertisement relating to any food shall contain a statement or claim thereon that such food has special characteristics unless approval is granted by the Chief Food Authority."

And further, Regulation No. 13(2) of the Food (labelling and Advertising) Regulation 2005, which states;

'13. (1) No label relating to any article of food shall contain a false claim or misleading description of such food in such a manner as to mislead the purchaser or consumer of such food.

(2) No food shall be described or presented in a manner that is false, ***misleading or deceptive or is likely to create an erroneous impression*** *regarding its character in any respect.*

(3) For the purpose of this Regulation "Claim" means any representation which states, suggests or implies that a food has particular qualities relating to its origin, nutritional properties, nature, processing, compositon or any other quality."

In addressing the contention that the Petitioners have not been granted a hearing prior to the issuance of the decision in P13 by the 2nd Respondent Committee, it is a fact that the Petitioners were invited to partake in a meeting hosted by the Respondent Committee on 27.06.2016 (1R1). They were thereafter informed that the suggestion for the usage of දෙවැනි බෑත will have to be approved at the next Food Advisory Committee meeting. The decision on the denial of approval for the usage of the term was subsequently communicated to the Petitioners as per P10. Thereby, the contention that the Petitioners were unheard is unsound as the Petitioners

were invited for, and partook in, the meeting (1R2) and discussed the issues pertaining to their usage of the term.

For the foregoing reasons, it is the considered view of this Court that the Application of the Petitioners is devoid of merits, and therefore, the Application is liable to be dismissed.

Accordingly, I dismiss the Application without cost.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL