

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL WRIT PETITION NO. OF 2003

IN THE MATTER OF:

PEPSICO INDIAN HOLDINGS PVT LTD & ORS... PETITIONERS

VERSUS

UNION OF INDIA & ORS.

.. RESPONDENTS

The Petitioner does not seek any relief in the present petition against the Centre for Science and Environment – Respondent no.5 & 6. The Petitioner however, craves leave to reserve its rights to seek appropriate relief against them in suitable proceedings, and states that all the allegations of mala fides against them may therefore be treated as having been withdrawn from the present petition. The Petitioner however maintains that the report furnished by the said respondents is correct and unreliable for the various reasons stated in the writ petition.

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RESPONDENTS

MEMO OF PARTIES

1. PEPSICO INDIA HOLDINGS PVT. LTD
3-B, DLF CORPORATE PARK
S-BLOCK, QUTAB ENCLAVE PHASE-III
GURGAON-122 002
THROUGH
V.R.SHANKAR
CONSTITUTED ATTORNEY
 2. PEARL DRINKS LTD.
B-42, LAWERENCE ROAD INDUSTRIAL AREA
DELHI-110 035
 3. MR. C.K. JAIPURIA
DIRECTOR
PEARL DRINKS LTD.
B-42, LAWERENCE ROAD INDUSTRIAL AREA
DELHI-110 035 ... PETITIONERS
- VERSUS

1. UNION OF INDIA
THROUGH SECRETARY
MINISTRY OF HEALTH & FAMILY WELFARE
NIRMAN BHAWAN
MAULANA AZAD ROAD
NEW DELHI
2. CANTEEN STORES DEPARTMENT
GOVERNMENT OF INDIA
THROUGH SECRETARY
MINISTRY OF DEFENCE
SENA BHAWAN
NEW DELHI

3. SECRETARY
MINISTRY OF FOOD PROCESSING INDUSTRIES
GOVERNMENT OF INDIA
PANCHSHEEL BHAWAN
AUGUST KRANTE MARG
NEW DELHI

4. BUREAU OF INDIAN STANDARDS
MANAK BHAWAN
9, BAHADURSHAH ZAFAR MARG
NEW DELHI

5. CENTRE FOR SCIENCE AND ENVIRONMENT
41, TUGLAKABAD INSTITUTIONAL AREA
NEW DELHI – 110 062
RESPONSENTS

6. SUNITA NARAYAN
DIRECTOR
CENTRE FOR SCIENCE AND ENVIRONMENT
41, TUGLAKABAD INSTITUTIONAL AREA
NEW DELHI-110 062
RESPONDENTS



J.SAGAR ASSOCIATES
ADVOCATES & SOLICITORS
84-E, C-6 LANE
OFF CENTRAL AVENUE
SAINIK FARMS
NEW DELHI

Date: August 8, 2003
New Delhi

SYNOPSIS AND LIST OF DATES

The present Petition is directed against illegal, arbitrary and unreasonable action of Respondents No.1 to 3 in overtly and covertly acting upon and proceeding on the basis of a Report prepared by Respondents No.5 and 6 at a laboratory which has no accreditation, its method and processes adopted in preparing the said Report as suspect, without following the due process of law as provided in the existing statutes and thus rendering credence to the said Reports. The said Respondents have thereby aided creation of doubt and suspicion in public mind regarding the quality of the products of the Petitioners which enjoy worldwide goodwill and reputation. The impugned actions of the Respondents have also resulted in trial of the Petitioners products and their quality by media and thus constitutes interferences in the right of the Petitioners particularly Petitioner No.2 to freely carry on its trade and business as secured and guaranteed by Article 19 (1) (g) of the Constitution of India. The conduct of the Respondents No.1 to 6 is per se illegal, malafide and therefore violative of Article 14 of the Constitution of India.

CRONOLOGICAL SEQUENCE OF EVENTS

Since year 1991: 'Pepsi' and various other brands of beverages with which the Petitioners are concerned have been manufactured, distributed and sold in India. The manufacturing process, the raw material used therefore, conform to and adhere to stringent standards and specifications which are consistent

with directive framed by European Union (EU), World Health Organization (WHO) norms as also the United States Environmental Protection Agency and Food and Drugs Administration of USA norms. The said brands of beverages have never fallen foul of relevant standards and specifications.

February 2003: Respondents No.5 and 6 raised a controversy alleging that the mineral water manufactured by 17 companies including Petitioners contained “a cocktail of pesticides”. As per press reports, the said claim was rubbished by the Respondent No.4. Bureau of Indian Standards (BIS), who declared that the water manufactured by 40 licensed manufacturers in this country is absolutely safe for drinking. The BIS had even reportedly challenged the authority of CSE and had stated that the test carried out by CSE in their own Pollution Monitoring Laboratory had no authenticity. Petitioners as manufacturer of mineral water, met the false allegation by publicizing the test results for their water and the fact that their water met EU norms as also USEPA and WHO standards. It is significant to note that CSE never opted to give any effective answer to justify the allegations they had made and, in short, abandoned the issue by collapsing into a complete silence. It is evident that

the entire action of CSE is actuated malafide and ulterior motives particularly the motive of gaining mileage through media coverage by disparaging and slandering the goodwill and reputation of internationally reputed brand name Pepsi.

February – Till date: As in the past, the Petitioners continued to have their beverages products and also the water used in manufacture thereof have been tested at various laboratories of impeccable reputation namely VIMEN, Hyderabad, TNO Nutrition, Netherlands, Pepsico Beverages International Laboratory, Cork, Ireland from time to time. On each occasion, the test reports conformed to aforesaid relevant international standards.

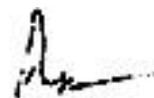
August 5, 2003: Respondent No.6 held a widely attended press conference in which she announced that the seven (7) brands of Carbonated Soft Drinks (CSD) manufactured by the Petitioners contain pesticide residues which are far higher than those prescribed by the European Union (EU). It was claimed in the said press conference that the Respondent No.5 had conducted tests on twelve cold drink brands (including those of the Petitioners) in Delhi to see if they contained pesticides. It was further claimed that

after conducting the tests in the Pollution Monitoring Laboratory of the Respondent No.5, it was found that the soft drinks manufactured by the Petitioners contained high residues of four pesticides mainly lindane, DDT and its metabolites, chlorepyrifos and melathion.

August 6, 2003: Respondent No.2 acting upon the aforesaid Report without ascertaining the correctness and veracity thereof proceeded to issue a communication whereby it directed stoppage of purchase of Petitioners' beverage products. The Respondent thus chose to take action on the basis of the said dubious report without following due process of law.

To date: Encouraged by the acts of omission of the Respondents, there has been a barrage of media publicity disparaging the beverages/products of the Petitioners and damage to and destruction of property of the Petitioners and other engaged in similar business 0 all of which has caused immense loss to their business reputation, goodwill and brand equity.

Hence the present petition.



4. BUREAU OF INDIAN STANDARDS
MANAK BHAWAN
9, BAHADURSHAH ZAFAR MARG
NEW DELHI

5. CENTRE FOR SCIENCE AND ENVIRONMENT
41, TUGLAKABAD INSTITUTIONAL AREA
NEW DELHI – 110 062

6. SUNITA NARAIN
DIRECTOR
CENTRE FOR SCIENCE AND ENVIRONMENT
41, TUGLAKABAD INSTITUTIONAL AREA
NEW DELHI – 110 062

..... RESPONDENTS

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT. ORDER OR DIRECTION FOR STRIKING DOWN AND QUASHING THE COMMUNICATION DATED AUGUST 6, 2003 ISSUED BY RESPONDENT NO.2 APPROPRIATE WRIT. ORDER OR DIRECTION DIRECTING THE RESPONDENT NO.1 AND 3 TO CONSTITUTE A COMMITTEE OF EXPERTS TO DETERMINE ACCURACY AND CORRECTNESS OF THE REPORT DATED AUGUST 5, 2003 TITLED AS “ANALYSIS OF PESTICIDE RESIDUES IN SOFT DRINKS” PREPARED AND PUBLISHED BY RESPONDENT NO.5 AND 6 AND THAT THE METHOD USED FOR PREPARING THE SAME IS SCIENTIFICALLY PROVEN AND FOR AN APPROPRIATE WRIT. ORDER OF DIRECTION DIRECTING AND COMMANDING THE RESPONDENTS TO NOT TO ACT UPON THE SAID REPORT.

MOST RESPECTFULLY SHEWETH:

1. The present Petition is being filed challenging the completely reckless, irresponsible and arbitrary conduct of the Respondents particularly Respondent No.1 in relying and acting upon so called Report dated August 5, 2003 viz. “Analysis of Pesticide Residues in Soft Drinks” (hereinafter “the Report”) prepared by Respondent No.5 (hereinafter also referred to as “CSE”) a non-governmental organization having no legal authority or recognition and in which Report wild and baseless allegations have been

made against the Petitioners alleging that the soft drinks manufactured and bottled by the Petitioners contain high level of pesticides injurious to public health. Petitioners submit that the action of Respondent NO.1 in relying upon the Report and giving credence there to when the Report does not have any legal sanctity, recognition or validity and its accuracy and veracity is unproven and suspect while not taking recourse to the existing legal and statutory regime for ascertaining true facts is per se illegal, arbitrary and violative of Article 14 of the Constitution of India. Petitioners further submit that the said actions of the Respondent has created false impression about the quality of the Petitioners product in the public mind and has caused immense damage to the Petitioners' goodwill, reputation and business and as such, interfered with and violated with the right of the Petitioners to carry on their business, secured and guaranteed by Article 19 (1) (g) of the Constitution of India.

2. The said Report was prepared by Respondent No.5 on its own and without any notice to the Petitioners and the alleged results were made public with a view to destroy Petitioners' goodwill, brand equity and reputation without giving an opportunity to the Petitioners to refute the correctness of the results contained therein. Respondents No.5 and 6 have made the said one-sided Report public knowing fully well that the same would have a serious impact not only on the interests of the Petitioners but would also create large scale panic and resentment amongst the general members of the public. The Respondent No.5 which claims to be an organization for the public interest thus acted in the most irresponsible manner and in total disregard to its effect upon the Petitioners, its associates and also the general

members of the public. The completely false and incorrect results of the said Report have had a tremendous negative effect upon the minds of the general public who have no means of knowing the correct facts.

3. But more than the conduct of the Respondent No.5 in acting in an irresponsible manner and against all the principles of public dealing and fair play, it is the Respondents No. 1 to 3 who appear to have blindly accepted the said Report as correct and have started issuing orders banning the purchase of prohibiting the sale of the beverages manufactured by the Petitioners. The Respondents completely failed to apply their mind and acted merely on the basis of the press Reports published in the newspapers and started giving such instruction in undue haste. The said Report prepared by a private person does not have any sanctity in law and could not have been binding upon any person much less the governmental authorities. The Respondents No.1 and 4 were duty bound to verify the correctness of the said Report before taking any action on its basis, through a neutral laboratory having the necessary equipment, expertise, system and processes to undertake such tests as are necessary in the present case. However, the said Respondents completely abdicated their statutory duties and in complete violation of the law of the land, have begun to act in a most irresponsible and capricious manner which is against the interests of not only the Petitioners but also the public at large. As one of the consequences of such panicky reaction of Respondents No.1 to 4, the entire public and other organizations in the country have followed suit and without there being any evidence of the veracity of the results stated in the said Report, many sections of the public have started venting their anger against the products

and brands of the Petitioners. The Petitioners are thus compelled to file the present Petition.

4. Facts leading to the filing of the present petition are stated in detail in the following paragraphs

5. Petitioner No. 1 is a company incorporated under the Companies Act having its registered office at 3-B, DLF Corporate Park, S- Block, Qutab Enclave Phase-III, Gurgaon-122002. Petitioner No.1 is also engaged in the business of manufacture, distribution and sale of Pepsi Beverages and is equally aggrieved of and prejudiced by the illegal, arbitrary and unreasonable actions of the Respondents.

6. Petitioner No.2 is a company incorporated under the provisions of Companies Act having its registered office at B-42, Lawrence Road Industrial Area, Delhi – 110 035. Petitioner No.2 carries on the business of manufacture, distribution and sale of carbonated soft drink beverages (hereinafter referred to as CSD) under the brand names of Pepsi, Mountain Dew, Diet Pepsi, Miranda, 7-Up (hereinafter collectively referred to as “Pepsi Beverages”). Petitioner No. 2’s goodwill, reputation and business have suffered immense damage from the illegal, arbitrary and unreasonable actions of the Respondents. Petitioner No.3 is a citizen of India and is a Shareholder and Managing Director of Petitioner No.2 and, as such is directly interested in the business and affairs of Petitioner No.2 company; any prejudice or damage caused to the business of Petitioner No.2 directly and immediately results in damage and prejudice in Petitioner No.2 and interferes with us right to freely carry on his business as secured and guaranteed under Article 19(1)(g) of the Constitution of India.

7. On August 5, 2003, Respondent No.6 held a widely attended press conference in which she announced that the seven(7) brands of Carbonated Soft Drinks (CDS) manufactured by the Plaintiff contain pesticide residues which are far higher than those prescribed by the European Union (EU). It was claimed in the said press conference that the Respondent No.5 had conducted tests on twelve cold drinks brands (including those of the Petitioners) in Delhi to see if they contained pesticides. It was further claimed that after conducting the tests in the Pollution Monitoring Laboratory of the Respondent No.5, it was found that the soft drinks manufactured by the Petitioners contained high residues of four pesticides namely lindane, DDT and its metabolites, chlorepyrifos and melathion.

8. Petitioners submit that the Report is totally baseless and unreliable and the same has been conjured in order to disparage, defame and damage the goodwill and brand equity of Pepsi Beverages. This is evident from the fact that the Report of CSE claim to have taken samples manufactured at the Jaipur plant in the months of April-May, 2003 and according to their Report, the level of pesticides have been found to be abnormally high. Coincidentally the Petitioners had taken samples from the same manufacturing unit and had it tested by VIMTA laboratory who have reported that the level of pesticides were will below the EU standards.

9. It is important to note that this is not the first occasion when CSE has attempted to malign the Petitioners, in February, 2003, Respondents No.5 & 6 had raised a controversy alleging that the mineral water bottles manufactured by 17 companies including Petitioners contained “a cocktail of pesticides”. As per press reports, the said claim was rubbished by the

Respondent No 4, Bureau of Indian Standards (BIS) who declared that the water manufactured by the 40 licensed manufactures in this country is absolutely safe for drinking. The BIS had even reported by challenged the authority of CSE and had stated that the test carried out by CSE in their own Pollution Monitoring Laboratory had no authenticity (significantly, BIS has on the present occasion, chosen to affirm the report of CSE and has thus committed a volte face without any reason of justification). Petitioners as manufacturer of mineral water met the false allegations by publicizing the test results for their water and the fact that their water met EU norms as also USEPA and WHO standards. It is significant to note that CSE never opted to give any effective answer to justify the allegations they had made and, in short, abandoned the issue by collapsing into a complete silence. It is evident that the entire action of CSE is actuated malafide and ulterior motives particularly the motive of gaining mileage through media coverage by disparaging and slandering the goodwill and reputation of internationally reputed brand name 'Pepsi'.

10. It is submitted that the alleged Report issued by Respondents No. 5 and 6 is completely false, incorrect and contains unsubstantiated and non-scientific results. The manner and the method in which the said Report has been prepared and the way the same was made public by the said respondents clearly indicate that the Report, its preparation and release, were done with an intent of causing injury to the reputation and business of the Petitioners and also to sensationalize the general public in order to gain undue publicity and name for themselves. The Respondents have acted maliciously and in a most irresponsible and irrational manner. The conduct

of the Respondents in approaching the press in undue haste without permitting the Petitioners to meet the allegations contained in the Report also establish that the Respondents have acted against all well settled principles of fair play and reasonable conduct, especially in matters which concern the general public and their sentiments.

11. Petitioners submit that Respondent Nos. 1 to 3 have, over a period of time, established and created infrastructure and resources for investigating detecting and taking punitive action in respect of adulteration of food products, beverages and like goods and merchandise. For instance, Respondent No.4, which is one such statutory body created with the object of formulating and setting standards and specifications for goods including food products and like goods and merchandise. The Respondents Nos. 1 to 3 have also recognized and accredited various laboratories to test the quality and composition of goods including good products and their conformity to standards and specifications, as applicable. The concerned legislative bodies have also established extensive legal regime to undertake and accomplish this task as is evident from the following:

- i. The Prevention of Food Adulteration Act 1954 is a comprehensive code covering all aspects relating to food concerning adulteration misbranding and related subjects. It provides extensive guidelines for the prevention of adulteration of foods and also contains penal provisions for dealing with violations falling under the Act and Rules framed therein.

- ii. Section 2 (ia) provides when an article of food shall be deemed to be adulterated and Section 2 (ix) provides when an article of food can be deemed to be misbranded.
- iii. As per Rules 5 of the Rules framed under the Act, the standards of quality of various articles of food are specified in Appendix b to the Rules.
- iv. Article 01.01 (A.01.01) prescribes for the standards for carbonated water (which includes carbonated soft drinks, CSD). Under this Article detailed guidelines have been stated for the manufacturer of CSD to adhere to.
- v. Sub-clause 2 of Rule 65 contains 71 items comprising of the names (chemical names) of various form of insecticides, pesticides and chemicals along with the type of food they apply to and the respective tolerance limit of the insecticides pesticides that it may contain. Till recently for packaged drinking water no tolerance limits were provided for under the Act and the Rules, the Government of India vide Notification no. GSR no. 554 (E) dated 18th July 2003 has now prescribed the tolerance limit of the insecticides/pesticides that may be contained in the packed drinking water. The parameters so defined come in force w.e.f. 1st Jan. 2004.
- vi. Under section 10. Food Inspector can take sample of any article of food from any person selling, delivering, preparing etc, and send it for analysis to the public analyst.

- vii. Section 11 provides for the procedure to be followed by the Food Inspectors while sampling and otherwise for compliance of various provisions of the Act.
- viii. Section 12 provides for the rights of a consumer or a purchaser who may opt to get the sample of food analyzed by submitting the same to the Public Analyst on payment of certain fees.
- ix. Section 13 provides for the rights of the manufacturer/vendor to seek second analysis of the sample from the Central Food Laboratory if they are aggrieved with the report of the public analyst.

It is pertinent to note that the Government Laboratories including Central Food laboratory does not, to the best of knowledge of the Petitioners, have the necessary equipments for undertaking and carrying out the test required for determining the issues in the present controversy. In the circumstances, in the event Respondent Nos.1 to 3 were to resort to the aforesaid legal provisions. It would be just expedient and necessary to have the test carried out through an independent laboratory having the necessary equipment, expertise system and processes.

12. Petitioners submit that the Pepsi Beverages have never been found to have fallen foul of any standards and specifications, as applicable. In this regard, the Petitioners state that:

- a) Petitioners adhere to the strictest standards in respect of Pepsi Beverages. The requirements which are self-imposed as regards contents of traces substances in the nature of impurities are more stringent than those prescribed by the Directive issued by the

European union (EU), World Health Organization (WHO) norms as also the United States Environmental Protection Agency (USEPA) and The Food and Drugs Administration. (FDA) of USA. It is further stated that the standards set by Petitioners are global in their application and apply as fully to their products manufactured in India as in all other countries.

(b) It is pertinent to note that water is the major raw material for production of CSD. The water purity standards adopted by the Petitioners are extremely stringent. In this behalf, petitioners submit that:

- (i) The location of the factories manufacturing Pepsi Beverages is based upon the water quality available at each such site. No manufacturing facility whatsoever is located at places where the water available is of even slightly inferior-quality. Even after the factory location is carefully chosen a 6" borewell is sunk which is not less than 300 ft deep so as to avoid contamination by pesticide and such other pollutant through seepage. The water from the newly sunk borewell is flushed for 15-20 days while tests are carried out on the water simultaneously and it is only when acceptable water quality is established that operations are allowed to commence.
- (ii) In several instances locations have been abandoned where water quality did not meet the afore aid high standards. The Petitioners utilize various treatment methods for purifying

water including reverse osmosis, coagulation systems, and beds (containing sands of various qualities) and activated carbon (which is the finest available Noritz Carbon).

- (iii) The water is first sent for examination to the independent certified and approved laboratories such as VIMTA, Hyderabad, TNO Nutrition and Food Research laboratory, Netherlands and Cork, Ireland. It is pertinent to note that VIMTA Laboratory in Hyderabad meets international standards fully. Petitioners also periodically gets the water tested from each of their manufacturing facilities from TNO Netherland and Cork Ireland so as to confirm the purity of the water as regards absence of pesticides and insecticides and other pollutants therein and samples of such reports are being filed herewith.

13. As regards the manner of preparing the Report, it is pertinent to note the following:

- (i) The samples for conducting analysis were collected by the Respondent No.5 and its officers on their own and in absence of any independent person as a witness.
- (ii) The tests were conducted by Respondent No.5 in a Laboratory owned and controlled by it.
- (iii) The laboratory of Respondent No.5 is not accredited nor certified by any Government agency including Bureau of Indian Standards (BIS).

- (iv) The Respondents No. 5 and 6 did not get the samples tested from the accredited or approved laboratories which have the adequate equipment to conduct the required tests and which laboratories are universally respected and recognized by all.
- (v) The Respondents did not make any effort to get their results cross-checked from other laboratories.
- (vi) The Respondent No. 5 did not put the Petitioners to notice as regards the tests being carried out by it.
- (vii) Even after the completion of the Report, the Respondent No.5 did not allow any opportunity to the petitioners to challenge and/or dispute the results arrived at by the tests conducted on the products manufactured by the Petitioners.
- (viii) The Respondent No. 5 and 6 showed undue haste in calling for a press conference and making public the results arrived at in the Report.
- (ix) The Respondents No. 5 and 6 showed complete disregard to the effect the unsubstantiated and arbitrary Report would have on the minds of the general public and also on the interests of the Petitioners.

14. It is important to note that the process of testing is not merely a matter of purchasing certain equipment. Testing involves a complex range of variables that are necessary before any laboratory can generate results that

are considered authentic and gain wide acceptance. Primary among these variable is the accreditation of the Laboratory. Accreditation is a lengthy and difficult procedure where the accreditation agencies ensure that the Laboratory consistently observes standards stipulated by such agency to the satisfaction of such agency. Typically the accreditation agency would require the following;

- (a) Thorough audit of equipment covering condition of the same, sensitivity levels, maintenance procedures & practices etc.
- (b) Audit of sources of chemicals used for testing and requiring correction so as to standardise the same with international requirements.
- (c) The various testing drills (steps) being followed by the personal performing the test and ensuring correction done by training appropriate personal at certified laboratories.
- (d) Cross-checking the same sample with any other approved laboratory for the test in question.

15. It is only when the results consistently fall within very tight limits as specified by the approving agencies that the laboratory is granted provisional accreditation.

16. Accreditation is finally granted (even then subject to periodic audits by the accreditation laboratories) after the results generated by the laboratory are continuously monitored and cross-calibrated by comparison with accredited laboratories across the world and is found to be consistent over the considerable length of time.

17. It is stated that even without going into the merits of the Report published by the Respondents No 5 and 6, the Report is, on the face of it, completely false and contains incorrect results, which have no substance or basis.

18. The wide spread media coverage, couple with the inaction and apathy of the Respondents as also deliberate and malafide act of relying upon the Report, has created sensation within several constituencies whether in the Government at the Central or State Levels and the consuming public at large. Media and other Reports suggest that several other agencies of Central and State Governments have created similarly. Some of these example are:

- The sale of Pepsi beverages has been prohibited in the outlets and canteens in the Parliaments premises.
- Canteen Stores Department of the Ministry of Defense has stopped purchases of Pepsi Beverages
- State Governments agencies are seizing and lifting samples of the Pepsi Beverages obviously with the intention of prosecuting and harassing the Petitioners:
- Petitioners verily believe that two of the plants owned by another CSD manufacturer namely Coca-Cola Company at Pune and Nagpur have been ordered to be closed by local administration.
- News of such other incidents on account of the said Report are regularly pouring in from different parts of the country.

It may be noted that all the above occurred without any explanation being sought from any of the manufacturers.

19. Petitioners submit that the Respondents particularly Respondent No. 2 have chosen to act on the Report which has no legal sanctity or recognition thereby giving a go by to the established legal regimen under which it has ample legal powers to investigate such allegations and ascertain the truth and has directed stoppage of purchase of Pepsi Beverages. It is submitted that such action of the Respondents No. 1 to 3 is evidently malafide and actuated by extraneous considerations.

20. Being deeply concerned by the impact on its reputation and business of the false allegations that had been made by CSE, the Petitioners sought the intervention of the Government of India vide its letter dated August 7, 2003. The Petitioners appraised the Government of India of the facts and in an effort to bring some finality to the issues that had become critical for resolution, the Petitioners called upon the Government of India to immediately constitute an independent panel of scientists and experts with inter alia, the following terms of reference:

- Whether Petitioners predicts contain any pesticides including those alleged by Respondents No. 5 & 6 and the levels thereof?
- If there are any pesticides in the products, what are the harmful consumption levels thereof and consequences of such consumption on the consumers?
- What should be the standards of quality for CSD products?
- Which are the laboratories that would be accredited to test the quality of products?

The Petitioners also suggested that the Report of the panel should be published widely so that the consumers can be made aware of its findings.

21. The Petitioners submitted to Government that a reasoned and just response to the controversy raised by the Respondents No. 5 & 6 should be as above. The Petitioners brought to the attention of the Government that impulsive actions solely relying on the media Reports were being taken such as banning the sale of products in the Parliament House, picking up of large scale sample in Kolkata. West Bengal etc. which in turn were leading to a chain reaction whereby various other State Governments and agencies are following suit with the same haste. The petitioners submitted that this was equivalent to conviction without holding trial and in total disregard to principles of natural justice.

22. The Petitioners also submitted that it was the duty of the Government to protect the country from economic upheavals by exposing fraudulent claims made by publicity seekers to confuse the public and cause false panic. Economic havoc has been caused and will continue to be caused to the CSD Industry until there is a conclusive finding by an independent panel as to the real truth of the allegations that have been made by CSE.

23. The Petitioners sought protection of the Government by requesting that it appreciate the havoc created by the trial by media initiated by CSE and the Petitioners requested the following action from the Government:

- a) Constitute an expert committee consisting of eminent scientist and experts with at least the frame of reference stated above in paragraph 20 above.
- b) Issue appropriate communication to the other departments in the Government of India and State Government to restrain

themselves from initiating any hasty action pending receipt of the Report of the experts

c) Restore sale of the products in the Parliament House

24. The Petitioners has not received any response to its representation made to the Government of India.

25. The Petitioners submit that the Respondents No. 1 to 3 should recognize that the equipment and the procedures required for sophisticated testing and analysis are relevant for pesticide detection as per international norms along with services of experienced technical experts to ensure that tests are accurate.

26. The Petitioners submits that the Government of India is duty bound to act in matter of such grave public importance – whether it is viewed from the context of the rights of the manufacturers to carry out a legitimate trade or from the context of a consumer who needs assurance that the products consumed by him are safe. The Government is duty bound to act in accordance with law whilst it takes actions or by its conduct condescends to actions which have such material impact on the Petitioners and others in the trade. The Government is duty bound to take action in such matters of larger public interest. However, the Respondents having failed to have acted as per law, and the Petitioners have no other remedy but to approach this Hon'ble Court, challenging the illegal and arbitrary actions on the following amongst other

GROUND

A. Because under the Constitution of India particularly Article 14 thereof there is an obligation casts on Respondents No. 1 to 3 to act

fairly and reasonably. The actions of Respondents No. 1 to 3 particularly Respondents No. 2 in having acted upon the Report and directing stoppage of purchase of Pepsi Beverages without ascertaining the veracity and the correctness thereof and thus giving a total go-bye to the extensive legal regime in existence and in force, is totally, illegal, arbitrary and unreasonable and violative of Article 14 of the Constitution of India.

- B. Because the action of Respondents particularly Respondent No. 2 in having acted upon the report and proceeded to direct stoppage of Pepsi Beverages when evidently the veracity and legality of the Report is suspect and unproven; it has no legal sanctity or recognition; without ascertaining the fact and/or truthfulness of allegations made in the Report by following due process of law constitutes interference with the right of the Petitioner particularly Petitioner No. 2 to freely carry on its trade and business as secured and guaranteed in Article 19 (1) (g) of the Constitution of India and as such, is illegal and void.
- C. Because the action of the Respondents impugned herein are tainted with malafide and are per se illegal as it evident from the fact that the Respondents chose to act post haste on the basis of the said Report which has no legal validity and sanctity, without pressing into service the procedure established by law to ascertain the veracity of the Report.
- D. Because the first Respondent. By omission and commission. Has lent support to canard and calumny being broadcast by CSE and its

functionaries on the basis of purported test report conjured by it, credibility whereof has not at all been established and the results recorded therein has not at all been tested scientifically by a neutral expert body/accredited laboratory having the necessary equipment, expertise, systems and processes to undertake such tests as are necessary in the present case.

- E. Because the First Respondent has failed in its duty to ensure equity, good conscience and fair play in the matters of public interest in that, instead of initiating investigation into the scurrilous, baseless allegations and getting the veracity, accuracy and credibility of the report conjured by CSE tested through a neutral laboratories having the necessary equipment, expertise, systems and process to undertake such tests as are necessary in the present case, it has instead, through its instrumentality, adopted a stance which tends to convey to the public that the petitioner's products are actually unfit for human consumption.

- F. Because the First Respondent has acted with utter disregard to its duty as "state" to observe principles of natural justice, in permitting its concerned Department to act upon and proceed on the basis of, the test reports manufactured by CSE; without giving any opportunity to the Petitioner to rebut or present its case, the credibility whereof has never been tested, the methods adopted wherein are not scientifically proven and the accuracy of the findings therein have never been determined.

- G. Because the First Respondent ought to have put an end to Petitioner's trial by media on the basis of a dubious report, which is likely to result in total ruin of its goodwill, brand equity, reputation and business, by appointing a Committee/independent body having necessary skills and expertise to investigate into the baseless allegation of CSE and determine the true facts.

- H. Because the First Respondent would have found, upon such investigation and enquiry, if it would have taken the trouble of initiating one that products of the Petitioner, particularly carbonated soft drinks, adhere to such standards and norms that are much more stringent than the ones insisted upon internationally.

- I. Because, the petitioner maintains and adheres to its own quality standards and norms; which have been formulated by PepsiCo Beverage International, USA which confirm to and is consistent with EU norms; which are far more stringent than those prescribed by WHO and the Directives issued by European Union as also those prescribed by United States Environmental Protection Agency and The Food and Drugs Administration of USA.

- J. Because the Petitioner, its goodwill and brand equity, has been exposed to disparagement, defamation and slander in the public arena without it having been afforded an opportunity to demonstrate the quality of its products and the standards they adhere to by sheer inaction and apathy of the First Respondent who rather than coming to the aid of the carbonated soft drink industry; which observes, by far,

the most stringent quality standards; by investigating the truth, chose to stand by and let CSE have a free run of calumny, canard, slander and disparagement.

- K. Because the First Respondent ought to have, in discharge of its duty as custodian of Public Interest and regulator of business and industry, stepped in and nipped the controversy in the bud by ordering an investigation an enquiry into the allegation of CSE which have not basis.

- L. Because this is not the first occasion upon which CSE has acted against the Company. By allegations made in February 2003 it alleged that the mineral water bottles manufactured by 17 companies including of the Pepsi contained “a cocktail of pesticides”. The said claim was immediately rubbished by the Bureau of Indian Standards (BIS) who declared that the water manufactured by 40 licensed manufacturers in this country is absolutely safe for drinking. The BIS had challenged the authority of CSE and had stated that the test carried out by CSE in their own Pollution Monitoring Laboratory had no authenticity. Pepsi as manufacturer of mineral water were compelled to meet such false allegations by publicizing the test results for their water and the fact that their water met EU norms as also USEPA and WHO standards. It is significant to note that CSE never opted to give any effective answer to justify the allegations they had made and, in short abandoned the issue by collapsing into a complete silence.

- M. Because the fact that the finding of CSE that carbonated Soft Drink of the Petitioner do not confirm to US-EPA Directives is a blatant falsehood which is evident from the fact that CSE, on its own showing, does not possess the necessary equipment, including Mass Spectrometer essential for conducting tests under US-PDA, US-EPA, and CODEX Directives.

- N. Because it is a duty of the State towards its citizens to act in accordance with law; equally there is a duty to not to condemn a citizen without following due process of law, at least without following the principle of natural justice.

- O. Because unless this Hon'ble Court interferes and grants the relief prayed for in the present Petition, it is demonstrably clear particularly from the conduct of the Respondent Nos. 1, 2 and 3 that it is unlikely to obtain justice from any other quarter.

27. The Respondent Nos. 1 and 3, against whom substantive reliefs have been sought in the present petition have its principal seat within the territorial jurisdiction of this Hon'ble Court. The Respondent No. 2 whose communication directing stoppage of purchase of Pepsi Beverages is impugned herein also has its principal office within the territorial jurisdiction of this Hon'ble Court. The report which has been illegally acted upon by Respondent Nos. 1 to 3 was prepared and published within the territorial jurisdiction of this Hon'ble Court. The Hon'ble Court this has the jurisdiction to entertain and decide the present Petition

28. The Petitioners have no alternative efficacious remedy other than filing the present Petition and seek intervention of this Hon'ble Court.

29. The Petitioners have not filed any other or similar Petition before this Hon'ble Court or any other Court.


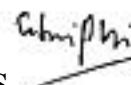
30. The copies of the documents being filed herewith are true copies of their respective originals.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ of certiorari or any other appropriate writ, order or direction for striking down and quashing the communication dated August 6, 2003 issued by Respondent No. 2;
- (b) Issue an appropriate writ, order to direction directing the Respondent Nos. 1 and 3 to constitute a committee of experts to determine accuracy and correctness of the report dated August 5, 2003 titled as "Analysis of Pesticide Residues in Soft Drinks" prepared and published by respondent no. 5 and 6 and that the method used for preparing the same is scientifically proven through a laboratory having the necessary equipment, expertise, systems and processes;
- (c) Issue an appropriate writ, order or direction directing and commanding the Respondent Nos. 1 to 4 to not to act upon the said report; and

- (d) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.


PETITIONERS 

THROUGH


J. SAGAR ASSOCIATES
ADVOCATES & SOLICITORS
84-E, C-6 LANE
OFF. CENTRAL AVENUE
SAINIK FARMS
NEW DELHI

NEW DELHI

DATED: 8/8/23

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL WRIT PETITION NO. OF 2003

IN THE MATTER OF:

PEPSICO INDIA HOLDINGS PVT. LTD & ORS PETITIONERS
VERSUS
UNIONOF INDIA & ORS RESPONDENTS
AFFIDAVIT

I, V R Shankar, son of late Sh V J Ranganathan, aged about 36 years, 3-B, DLF Corporate Park, S-Block, Qutab Enclave, Phase – III, Gurgaon, presently at New Delhi, do hereby solemnly state and affirm as under:

1. That I am the General Management (Legal) and the constituted attorney of Petitioner No.1 and conversant with the facts and circumstances of the case and as such competent to depose by way of this affidavit.
2. I state that the contents of the accompanying writ petition are true and correct to my knowledge based on records and the submissions made therein are based on advice received and believed to be correct.
3. The documents filed along with the petition are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified at New Delhi on this day of August, 2003 that the contents of para 1 to 3 of the affidavit are true and correct; no part of it is false an nothing material has been concealed therefrom.


DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DELHI

C MP NO.8890 OF 2003

IN

CIVIL WRIT PETITION NO. 5090 OF 2003

IN THE MATTER OF:

PEPSICO INDIA HOLDINGS PVT. LTD & ORS.... PETITIONERS

VERSUS

UNIONOF INDIA & ORS .. RESPONDENTS

APPLICATION UNDER SECTION 151 CPC FOR INTERIM RELIEF

MOST RESPECTFULLY SHEWETH:

1. The Petitioners have filed the above mentioned petition challenging the completely reckless, irresponsible and arbitrary conduct of the Respondents particularly Respondent No.1 in relying and acting upon so called Report dated August 5, 2003 viz. "Analysis of Pesticides Residues in Soft Drinks" (hereinafter "the Report") prepared by Respondent No.5 in which Report wild and baseless allegations have been made against the Petitioners alleging that the soft drinks manufactured and bottled by the Petitioners contain high level of pesticides injurious to public health. The contents of the Petition are not being stated herein for the sake of brevity and it is prayed that the same may be read as a part of this application.

2. It is submitted that the action of Respondent No.1 in relying upon the Report and giving credence thereto when the Report does not have any legal sanctity, recognition or validity and its accuracy and veracity is

unproven and suspect, whilst not taking recourse to the existing legal and statutory regime of ascertaining true facts, is per se illegal, arbitrary and violative of Article 14 of the Constitution of India. Petitioners further submit that the said actions of the Respondent has created false impression about the quality of `the Petitioners' product, in the public mind and has caused immense damage to the Petitioners' goodwill, reputation and business and as such, interfered with an violated with the right of the Petitioners to carry on their business, secured and guaranteed by Article 19 (1) (g) of the Constitution of India.

3. The said Report was prepared by Respondent No.5 on its own and without any notice to the Petitioners and the alleged results were made public with a view to destroy Petitioners' goodwill, brand equity and reputation without giving an opportunity to the Petitioners to refute the correctness of the results contained therein. Respondent No. 5 and 6 have made the said one-sided Report public knowing fully well that the same would have a serious impact not only on the interests of the Petitioners but would also create large scale panic and resentment amongst the general members of the public. The Respondent No.5 which claims to be an organization for the public interest, thus acted in the most irresponsible manner and in total disregard to its effect upon the Petitioners, its associates and also the general members of the public. The completely false and incorrect results of the said Report have had a tremendous negative effect upon the minds of the general public who have no means of knowing the correct facts.

4. Further, the conduct of the Respondent No.5 in acting in an irresponsible manner and against all the principles to public dealing and fair play, it is the Respondents No.1 to 3 who have blindly accepted the said Report as correct and have started issuing orders banning the purchase or prohibiting the sale of the beverages manufactured by the Petitioners. The Respondents completely failed to apply their mind and acted merely on the basis of the press Reports published in the newspapers and started giving such instructions in undue haste. The said Report prepared by a private person, does not have any sanctity in law and could not have been binding upon any person much less the governmental authorities. The Respondents No.1 to 4 were duty bound to verify the correctness of the said Report before taking any action to its basis. However, the said Respondents completely abdicated their statutory duties, the throwing all caution to sensibility, have begun to act in a most irresponsible and capricious manner which is against the interests of not only the Petitioners but also the public at large. As a consequence of such panicky reaction of Respondents No.1 to 4, the entire public and other organizations in the country have followed suit with and without there being any evidence of the veracity of the results stated in the said Report, the public have started protesting against the brands of the Petitioners. The Petitioners are thus compelled to file the present Petition.

5. That the Petitioners have a strong prima facie case in their favour and are likely to succeed in the petition. That the conduct of Respondents No.1 to 3 is based upon an unauthenticated, unscientific, self serving and malicious Report which has no sanctity in law. Such conduct having no sanctity in law and in derogation of the specific provisions of law is liable to

be set aside and the said Respondents are bound to suffer the writs as prayed for. The balance of convenience is also in favour of the Petitioners and against the Respondents. The irreparable damage has resulted in cumulative reactions of panic throughout the various part of the country and unless the relief as prayed for is granted, the Respondents are likely to suffer such loss of goodwill, reputation and business which cannot be compensated in terms of money. On the other hand, the Respondents will not suffer any loss or prejudice if the relief as prayed is allowed.

PRAYER

In view of the facts and circumstances mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. pass an ex-parte ad-interim order directing the Respondents not to act upon the Report dated August 5, 2003 titled as "Analysis of Pesticide Residues in Soft Drinks" in any manner whatsoever;

- B. pass an ex-parte ad-interim order Directing Respondent Nos. 1 & 3 to immediately set up a committee of experts and refer the issues as set out in Representation dated 7/8/03 to at the outset determine the correctness and veracity of the Report dated August 5, 2003 titled as "Analysis of Pesticide Residues in Soft Drinks" issued by Respondents No.5 & 6 and that the method used for preparing the same is scientifically proven through a laboratory having the necessary equipment, expertise, systems and processes;

- C. Pass an ex-parte ad-interim order directing the Respondents No. 5 & 6 from not publishing any unsubstantiated statements or materials against the Petitioners and to forthwith withdraw all such material from circulation and from the web site www.cse.org; and
- D. Pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

PETITIONERS/APPLICANTS

THROUGH


J. SAGAR ASSOCIATES
SOLICITORS & ADVOCATES
84-E, C-6 LANE
OFF.CENTRAL AVENUE
SAINIK FARMS
NEW DELHI

NEW DELHI

DATED: 8/2/23

IN THE HIGH COURT OF DELHI AT NEW DELHI

C M P NO. OF 2003

IN

CIVIL WRIT PETITION NO. OF 2003

IN THE MATTER OF:

PEPSICO INDIA HOLDINGS PVT. LTD & ORS PETITIONERS
VERUS
UNIONOF INDIA & ORS RESPONDENTS

AFFIDAVIT

I, V R Shankar, son of late Sh V J Ranganathan, aged about 36 years, 3-B, DLF Corporate Park, S-Block, Qutab Enclave, Phase – III, Gurgaon, presently at New Delhi, do hereby solemnly state and affirm as under:

1. That I am the General Management (Legal) and the constituted attorney of Petitioner No.1 and conversant with the facts and circumstances of the case and as such competent to depose by way of this affidavit.
2. I state that the contents of the accompanying writ petition are true and correct to my knowledge based on records and the submissions made therein are based on advice received and believed to be correct.


DEPONENT

VERIFICATION

Verified at New Delhi on this day of August, 2003 that the contents of para 1 & 2 of the affidavit are true and correct; no part of it is false an nothing material has been concealed therefrom.


DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DELHI

C MP NO.8891 OF 2003

IN

CIVIL WRIT PETITION NO. 5090 OF 2003

IN THE MATTER OF:

PEPSICO INDIA HOLDINGS PVT. LTD & ORS PETITIONERS

VERSUS

UNIONOF INDIA & ORS RESPONDENTS

**APPLICATION UNDER SECTION 151 CPC FOR EXEMPTION
FROM FILING TYPED COPIES OF DIM DOCUMENTS**

MOST RESPECTFULLY SHEWETH:

1. The Petitioners have filed the above mentioned writ petition for the relief as prayed therein. The contents of the Petition are not being repeated herein for the sake of brevity and the same may be read as a part of this application.
2. That along with the petition the Petitioners have filed copies of documents as a separate volume. The Petitioners state that the petition is being filed in the state of urgency and the said documents, some of which are dim, could not be typed.
3. That because of the urgency and the importance of the relief prayed for, this Hon'ble Court may exempt the petitioners from filing typed

copies of the documents. Petitioners undertake to file typed copies if required by this Hon'ble Court.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- A. grant exemption to the Petitioners from filing typed copies of the dim documents filed along with petition; and
- B. pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

PETITIONERS/APPLICANTS

THROUGH



J.SAGAR ASSOCIATES
SOLICITORS & ADVOCATES
84-E, C-6 LANE
OFF.CENTRAL AVENUE
SAINIK FARMS
NEW DELHI

NEW DELHI

DATED:

8/8/23

IN THE HIGH COURT OF DELHI AT NEW DELHI

C M P NO. OF 2003

IN

CIVIL WRIT PETITION NO. OF 2003

IN THE MATTER OF:

PEPSICO INDIA HOLDINGS PVT. LTD & ORS PETITIONERS

VERSUS

UNIONOF INDIA & ORS RESPONDENTS

AFFIDAVIT

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