



2024 INSC 406

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO.645/2022

INDIAN MEDICAL ASSOCIATION & ANR.

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

ORDER

Interlocutory Application No.110011 of 2024

1. This application has been moved by the respondent No.5 praying inter alia that judicial notice be taken of the statements made by the President, Indian Medical Association¹-Petitioner No.1 of the offending statements made by him in his interview published in various publications on 29th April, 2024, on the eve of this matter being listed in this Court on 30th April, 2024.

2. It is pertinent to note that a reference was made by learned counsel for the respondents No.5 to 7 to the aforesaid interview on the last date of hearing as well and a copy of the interview printed in the press was duly furnished to Mr. P.S. Patwalia, learned Senior counsel who had sought time to respond. Despite that, no response has been filed so far.

3. Issue notice.

1 For short 'IMA'

4. Mr. P.S. Patwalia, learned Senior counsel states that his briefing counsel accepts notice on behalf of the President, IMA. He shall be impleaded as a co-respondent in the present proceedings. Amended Memo of parties shall be filed by the counsel for the petitioner no. 1- IMA before the next date of hearing. Reply be filed well before the next date of hearing, i.e., 14th May, 2024.

WRIT PETITION (CIVIL) NO. 645/2022 :

1. It is submitted on behalf of the respondents no. 5 to 7/proposed contemnors that pursuant to the orders passed on the last date of hearing, i.e. 30th April, 2024, the relevant pages of each newspaper in original, where a public apology has been published by the respondents no.5 to 7, tendering an unqualified apology for violating the orders of this Court as passed on 23rd April, 2024, by continuing to issue deceptive advertisements and for breaching the undertakings given to this Court, has been filed. It is submitted that the Registry has accepted one set of the said documents. The second set of documents, that are photocopies of the originals of the already filed newspapers, are proposed to be filed in the course of the day.

2. The photo copies shall be filed at the earliest. The Registry shall take the same on record.

3. Service has been effected on the National Medical Commission² that is represented by a counsel. However, no steps have been taken by NMC to file an affidavit in the light of the observations made by this Court in para 9 of the order passed on 23rd April, 2024. NMC

2 For short 'the NMC'

shall file an affidavit before the next date of hearing, i.e. 14th May, 2024.

4. On the last date of hearing, keeping in mind the number of misleading advertisements that are being published/displayed with little/nil accountability on the part of the manufacturers, promoters and advertisers, it was deemed appropriate to implead the Ministry of Consumer Affairs, Ministry of Food and Public Distribution, Ministry of Information and Broadcasting and Ministry of Electronics and Information Technology as parties in the present proceedings to examine the steps taken by them to prevent abuse of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954³ and the Rules, the Drug and Cosmetics Act, 1940⁴ and the Consumer Protection Act, 1986⁵. In light of the stand taken by Union of India that implementation of the DMR Act, 1954 lies in the hands of the State Governments/UT Licensing Authorities, all of them were also directed to be impleaded in the present proceedings.

5. Mr. K.M. Natraj, learned Additional Solicitor General who is already appearing for the Ministry of Ayush and Ministry of Health and Family Welfare, Union of India submits that besides an earlier affidavit filed by the Ministry of AYUSH, an additional affidavit has been filed. Ministry of Consumer Affairs and the Ministry of Information and Broadcasting have also filed separate affidavits. He submits that the Department of Food and Public Distribution (under the Ministry of Consumer Affairs) and the Ministry of Electronics and Information Technology do not have a major role to play in respect of the issue being examined by the

³ In short DMR Act, 1954

⁴ In short DC Act, 1940

⁵ In short C.P. Act, 1986

Court. The relevant ministries are the Ministry of AYUSH, Ministry of Health and Family Welfare, Ministry of Consumer Affairs and the Ministry of Information and Broadcasting.

6. Learned counsel for the petitioner-IMA submits that as was permitted by this Court, service has been effected on the Standing counsel of all the State Governments/Union Territories. Only the following State Governments/Union Territories have been served:

- (i) Himachal Pradesh;
- (ii) Jharkhand;
- (iii) Kerala;
- (iv) NCT of Delhi;
- (v) Odisha;
- (vi) Puducherry;
- (vii) Rajasthan;
- (viii) Tamil Nadu;
- (ix) Telangana;
- (x) Uttarakhand; and
- (xi) West Bengal

Appearance has been entered by learned counsel for the NCT of Delhi, States of Gujarat, Nagaland, Uttar Pradesh, Madhya Pradesh and U.T. of Ladakh.

7. Learned counsel for the State of Uttarakhand submits that an affidavit has already been filed by the State Licensing Authority and an additional affidavit is proposed to be filed.

8. Learned counsel for all the State Governments/Union Territories besides those mentioned above, are directed to file independent affidavits of the Licensing authorities in each State/UT regarding the action taken by them in respect of misleading advertisements being published/displayed in the press/electronic media that run contrary to the provisions of the DMR, 1954 and Rules, DC Act, 1940 and C.P. Act, 1986. The affidavits shall focus on the action taken for the period from the year 2018 onwards.

9. Coming to the issue highlighted on the last date of hearing when the Union of India was called upon to explain its letter dated 29th August, 2023 issued by the Ministry of AYUSH and addressed to all State Governments/Union Territories and Drug Controllers of the Ministry of AYUSH informing that the Ayurvedic Siddha and Unani Drugs Technical Advisory Board⁶ had recommended in its meeting that Rule 170 of the Drugs and Cosmetics Rules, 1945 be deleted from the Drugs and Cosmetics Rules, 1945 and pending action on the said recommendation, all authorities were directed not to initiate any action under the said rule, Learned ASG seeks to explain that Rule 170 has been challenged in different proceedings pending before various High Courts including the High Courts of Delhi, Bombay and Kerala. Pursuant to an order dated 01st May, 2023 passed by the High Court of Delhi in a batch of petitions, lead matter being W.P. (C) No.321/2019, directions were issued that any decision taken by the Union of India pursuant to the recommendations made by ASUDTAB shall not be implemented for a period of four weeks from the date of its communication and the said interim arrangement shall continue to operate.

10. It is submitted that thereafter, ASUDTAB had recommended that final notification be issued for omission of Rule 170. The said recommendation was placed before the Ministry of Law and Justice for approval. The Ministry recommended that the final notification should be published within three months, if no objections/suggestions are received and within six months if a large number of objections/suggestions are received on the draft notification.

11. The above development took place in the month of July, 2023. However, the Ministry

⁶ In short ASUDTAB

of AYUSH proceeded to issue the Notification only on 02nd February, 2024, inviting objections to the recommendations/suggestions to the draft notification from all stakeholders within 30 days from the date of the notification being issued in the Official Gazette. Period of 30 days has long since expired but no further steps have been taken by the Ministry of AYUSH. Learned ASG is not in a position to inform us as to how many objections/suggestions were received on the draft notification. The Ministry of AYUSH is directed to expedite steps proposed to be taken by it.

12. In our view, an administrative instruction issued by virtue of the letter dated 29th August, 2023, cannot put on hold Rule 170 of the Drugs and Cosmetics Rules, 1945 so long as it remains enforceable in law.

13. Mr. Natraj, learned Additional Solicitor General submits on instructions that the Ministry shall forthwith withdraw the letter dated 29th August, 2023. Needful shall be done with immediate effect.

14. Coming next to the affidavit filed by the Ministry of Information and Broadcasting, the same refers to a series of regulatory mechanisms laid down for TV channels under the Cable Television Networks (Regulation) Act, 1995⁷. It is submitted that there are self regulatory bodies of the broadcasters, constituted by the broadcasters or its Association and it is for them to perform various functions including overseeing and assurance and an adherence by the broadcasters to the Programme Code and Advertising Code, provide guidance to broadcasters on various aspects of the aforesaid Codes, dispose of grievances that have not

⁷ In short, CTN Act, 1995

been disposed of by the broadcasters within a fixed timeline, hear appeals and issue guidance/advisories to the broadcasters from time to time. It is further submitted that where the broadcasters fail to comply with the guidance/advisory of the said regulating body within the specified timeline, the self regulatory body shall refer the matter to the Oversight Mechanism within 15 days.

15. The details regarding the Oversight Mechanism have also been set out in the affidavit. Reference has been made to Inter Departmental Committee to be constituted by the Central Government that is required to devise its own procedure for hearing grievances/complaints and for advising/warning/censuring/admonishing/reprimanding the defaulting broadcaster or requiring an apology from such a broadcaster, including a warning card or a disclaimer and deletion/modification of the content. The last option is of taking the channel or the programme in question off-air for a specified time period. The affidavit also refers to the steps taken for implementation of the Cable Television Networks (Amendment) Rules, 2021⁸.

16. The Regulatory Mechanism in respect of the Print Media and the overall action taken by the Ministry of Information and Broadcasting since 2018 has been mentioned in the affidavit. A computation of the action taken on complaints received against TV channels between the year 2018 to 03rd May, 2024 shows that a total of 1645 complaints have been received in the above duration out of which, only 53 were sent to the broadcasters, 769 were sent to the ASCI, 235 were sent to the concerned departments/regulators and 22 were sent to PCI. Only 566 complaints have been responded to. Learned ASG submits that there is

⁸ In short, Amendment Rules, 2021

no data available in the Ministry on the action if any, ultimately taken to redress the grievances received against the TV Channels.

17. The summary of the action taken against broadcasters for violation of the Advertisement Code since 2018 points a dismal picture. Action has been taken against the broadcasters for violation of the Advertisement Code in only 60 cases. Coordinated action with the Ministry of AYUSH finds separate mention in the affidavit. It also refers to the *suo moto* action taken by the Ministry on grounds of obscenity. There are only 3 instances of action taken in respect of misleading advertisements aired on FM Radio. The Press Council of India is stated to have received 77 complaints relating to misleading advertisements since the year 2018. Out of those 77 cases, 39 have been closed being defective, 15 have been closed on undertaking from the respondents stating that they will not publish such advertisements in the future and 17 cases are on-going.

18. We are of the opinion that when the C.P. Act, 1986 has dedicated an entire chapter to the Central Consumer Protection Authority (Chapter III) that contemplates establishment of a Central Consumer Protection Authority⁹ by the Central Government to regulate matters relating to violation of the rights of the consumers, unfair trade practices and false/misleading advertisements which are prejudicial to the interest of the public and consumers and to promote, protect and enforce the rights of the consumers as a class, the said provisions ought to be used with much more vigour and intensity.

19. Learned Additional Solicitor General informs the Court that Central Government has

⁹ In short, Central Authority

established a Consumer Protection Authority which is functional and its powers and functions as delineated in Section 18, are fairly broad based and all encompassing.

20. It is pertinent to note that the Ministry of Consumer Affairs has enclosed with its affidavit, Notification dated 09th June, 2022, setting out the Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022¹⁰ that deals with prohibition of surrogate advertising, free claims advertisements, children targeted advertisements, and advertisements that are prohibited by law. Guidelines, 2022 specifically define amongst others, the expression “bait advertisements”, “endorser” and “surrogate advertising”. A status report of the action taken by the Central Authority on false and misleading advertisements including food and health products finds mention at Annexure R-4 and shows that from July, 2020 to April, 2024, the total notices issued by the Central Authority for misleading advertisements is 163. Out of the said 163 notices, 58 were closed and the remaining 105 are stated to be under process. Not much light has been thrown on the nature of action taken and the activities of the Authority which is empowered to take even *suo moto* action, whenever false/misleading advertisements are noticed. The Ministry of Consumer Affairs is directed to file an additional affidavit setting out the action taken by the Central Authority on noticing/being informed of false/misleading advertisements, particularly in the food and health sector.

21. We are of the firm view that advertisers/advertising agencies and endorsers are equally responsible for issuing false and misleading advertisements. Such endorsements

¹⁰ In short, Guidelines, 2022

that are routinely made by public figures, influencers, celebrities etc. go a long way in promoting a product. It is imperative for them to act with a sense of responsibility when endorsing any product and take responsibility for the same, as reflected in Guideline No.8 of the Guidelines, 2022 that relates to advertisements that address/target or use children for various purposes and Guideline No.12 that lays down the duties of manufacturers, service providers, advertisers and advertising agencies to ensure that the trust of the consumer is not abused or exploited due to sheer lack of knowledge or inexperience. Guideline No.13 requires a due diligence to be undertaken for endorsement of advertisements and requires a person who endorses a product to have adequate information about, or experience with a specific good, product or service that is proposed to be endorsed and ensure that it must not be deceptive.

22. All the aforesaid provisions including statutory provisions/rules, regulations and guidelines have a salutary object, which is to serve the consumers and ensure that they are made aware of the kind of product that is being offered for purchase, particularly in the food and health sector. We are of the opinion that the aforesaid Ministries ought to set up and promote a mechanism which encourages the consumer to lodge a complaint and for the said complaint to be taken to its logical conclusion, instead of simply being marked/forwarded to the concerned State authority, thus leaving the consumer clueless as to the final outcome of the complaint made.

23. In view of the above and in the absence of any robust mechanism enacted in law to ensure that the obligations cast on the advertiser to adhere to stipulations in the Guidelines, 2022 in letter and spirit, it is deemed appropriate to invoke the powers vested in this Court

under Article 32 of the Constitution of India for the enforcement of the fundamental right to health that encompasses the right of a consumer to be made aware of the quality of products being offered for sale by manufacturers, service providers, advertisers and advertising agencies. To fill up this vacuum, it is directed that henceforth, before an advertisement is printed/aired/displayed, a Self declaration shall be submitted by the advertiser/advertising agency on the lines contemplated in Rule 7 of the Cable Television Networks Rules, 1994 which is as follows :

- “7. Advertising Code.** - (1) Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.
- (2) No advertisement shall be permitted which-
- (i) derides any race, caste, colour, creed and nationality;
 - (ii) is against any provision of the Constitution of India;
 - (iii) tends to incite people to crime, cause disorder or violence, or breach of law or glorifies violence or obscenity in any way;
 - (iv) presents criminality as desirable;
 - (v) exploits the national emblem, or any part of the Constitution or the person or personality of a national leader or a State dignitary;
 - (vi) in its depiction of women violates the constitutional guarantees to all citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasises passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator shall ensure that the portrayal of the female form, in the programmes carried in his cable service, is tasteful and aesthetic, and is within the well established norms of good taste and decency;
 - (vii) exploits social evils like dowry, child marriage.
 - (viii) promotes directly or indirectly production, sale or consumption of-
- (A) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;
- (5) No advertisement shall contain references which are likely to lead the public to infer that the product advertised or any of its ingredients has some special or miraculous or super-natural property or quality, which is difficult of being proved.”

24. The Self-declaration shall be uploaded by the advertiser/advertising agency on the

Broadcast Sewa Portal run under the aegis of the Ministry of Information and Broadcasting. As for the advertisements in the Press/Print Media/Internet, the Ministry is directed to create a dedicated portal within four weeks from today. Immediately on the portal being activated, the advertisers shall upload a Self-declaration before any advertisement is issued in the Press/Print Media/Internet. Proof of uploading the Self-declaration shall be made available by the advertisers to the concerned broadcaster/printer/publisher/T.V. Channel/electronic media, as the case may be, for the records. No advertisements shall be permitted to be run on the relevant channels and/or in the print media/internet without uploading the self-declaration as directed above. The above directions shall be treated as the law declared by this Court under Article 141 of the Constitution of India.

25. Noticing the provisions of the Food, Safety and Standards Act, 2006¹¹, it is deemed appropriate to direct the Ministry of Health and Family Welfare to file an affidavit furnishing the relevant data with regard to the complaints received by the Food, Safety and Standard Authority of India¹² and the action taken on such complaints relating to penalty for selling food not of the nature or substance or quality demanded (Section 50), penalty for sub-standard food (Section 51), penalty for misbranded food (Section 52), penalty for misleading advertisement (Section 53) and penalty for food containing extraneous matter (Section 54).

26. We may note that FSSAI is authorized to take action on its own in the event of any such misleading advertisements coming to its notice, without waiting for any complaint to be received. Therefore, the affidavit proposed to be filed as directed above, shall indicate the

¹¹ In short, FSSA, 2006

¹² In short, FSSAI

nature of action taken by FSSAI on its own, besides on complaints received under the FSSA, 2006 from the year 2018 onwards and the action proposed to be taken by it to deal with misleading advertisements.

27. List on 09th July, 2024, at the top of the Board.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
7th MAY, 2024