

Ion Exchange (India) Ltd.

Vs

Union of India and Others

Civil Appeal No. 5517 of 1998

(S. P. Bharucha, K. Venkataswami JJ)

06.11.1998

JUDGMENT

S. P. BHARUCHA, J. –

1. Leave granted.

2. The appellant manufactures water purifiers. It issued advertisements stating that these water purifiers provided 100% safe drinking water instantly and that the water stayed bacteria-free in storage. An enquiry was instituted by the Monopolies and Restrictive Trade Practices Commission at the behest of its Director General of Investigation and Registration. A Notice of Enquiry was issued to the appellant. At the hearing thereof, the appellant did not contest the allegation made in the Notice of Enquiry and expressed willingness on the very first date of hearing before the Commission to submit to a Cease and Desist Order, which was passed. What is objected to on behalf of the appellant is this further direction of the Commission :

"If the respondent wants to issue an advertisement in future about its product, it will get a draft of its advertisement approved by the Commission."

3. Impugning the power of the Commission to issue such further direction, the appellant filed a writ petition in the High Court at Bombay. The High Court considered the provisions of Section 36-D of the Monopolies and Restrictive Trade Practices Act, 1969 as amended, and observed that the impugned direction was given to subserve the object of effectively checking repetition of the unfair trade practice affecting a large number of people. The High Court modified the impugned direction thus :

"The petitioner-manufacturer shall submit the proposed draft advertisement to the Director General along with the necessary documents supporting or substantiating the contents of the advertisement. If they do not receive any objection from the Director General within four weeks, the petitioner-manufacturer shall be at liberty to publish the said advertisement."

4. The appellant is in appeal by special leave. It is submitted by learned counsel for the appellant that Section 36-D, as it read at the relevant time, clearly conferred no power on the Commission to issue the impugned direction. Even the amended Section 36-D, which really had no application to the particular case, did not confer on the Commission the power to give such direction. Emphasis was laid on the fact that the direction, whether as issued by the Commission or as amended by the High Court, would operate for all time to come. It was also submitted that the Commission had

ample powers to deal with any infraction of its Cease and Desist Orders. The learned Additional Solicitor General appearing for the respondents emphasized the amended provision upon which the High Court had relied and submitted that there was power in the Commission to issue the impugned direction.

5. Section 36-D, as it originally stood, read as follows :

"36-D. (1) The Commission may inquire into any unfair trade practice which may come before it for inquiry and, if, after such inquiry, it is of opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may, by order direct that -

(a) the practice shall be discontinued or shall not be repeated; and

(b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in such manner as may be specified in the order.

(2) The Commission may, instead of making any order under this section, permit any party to carry on any trade practice, if it so applies and take such steps within the time specified by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest or to the interest of any consumer or consumers generally, and, in any such case, if the Commission is satisfied that necessary steps have been taken within the time so specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of any trade practice which is expressly authorised by any law for the time being in force.

This is the provision which ruled at the relevant time. There is, very clearly, no empowerment of the Commission thereunder to issue a direction of the kind which is impugned.

6. The amended provision, upon which the High Court rested its order reads thus :

"36-D. (c) any information, statement or advertisement relating to such unfair trade practice, shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order."

The amended provision cannot be so read as enabling the Commission to require all advertisements that the appellant might issue in the future to be approved by the Commission in advance. The requirement to disclose information relates only to the unfair trade practice then under inquiry. As to public interest, the Commission is sufficiently armed under the Act with powers to take action against those who breach its Cease and Desist Orders. We do not think that it requires the additional power of supervision of the kind indicated either in the impugned direction of the Commission or in the order under challenge to effectively carry out its obligations. The Commission cannot incorporate such direction in its final Cease and Desist Orders.

7. Accordingly, the appeal is allowed. The judgment and order of the High Court under appeal is set aside. The writ petition filed by the appellants before the High Court is allowed to the extent aforesaid. No order as to costs.