
(2006) 02 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

AJAY KUMAR

APPELLANT

Vs

GODFREY PHILLIPS INDIA LTD.

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Citation : 2006 2 CPC 413 : 2006 3 CPJ 178

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Petition disposed of

Judgement

1. THE grievance of the petitioner is that the respondent - M/s. Godfrey Phillips India Ltd. are the manufacturer of "Red & White" cigarette is involved in unfair trade practice by firstly, advertising with a smiling face of a smoking film actor Akshay Kumar and high lighting "Red and White Peenay Walon Ki Baat Hi Kuchh Aur Hai" in very bolder letters as compared to "statutory warning" which is just about legible and secondly by organizing a "Red & White Bravery Awards".

2. IT is submitted that the advertisement C-I and Bravery Award C-II violate Sub-section (2) of Section 6 of the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, which provides as under: "No package of cigarettes or its label or any advertisement relating thereto shall contain any matter or statement which is inconsistent with, or detracts from the specified warning." It was further contended that his appeal was dismissed without hearing him on the two grounds: "After perusing the same, we hardly find any merit in the appeal as the complainant had filed the complaint under public interest and parallel proceedings are pending before the Civil Court. It is a settled principle of law that parallel proceedings cannot be allowed to go side by side and as such, the District Forum has rightly dismissed the complaint. Accordingly, the appeal fails and is hereby dismissed in limine."

It is claimed in this revision by the petitioner who is well versed in law that the impugned order be set aside and the opposite party may be directed to discontinue the aforesaid unfair trade practices and not to repeat the same as also help in mitigating its ill-effects on teenagers of District Yamuna Nagar by

spending Rs. 5.00 lakh at least, in the interest of justice.

3. ON the other hand, Senior Counsel Mr. Ashok Desai of the respondents has submitted that there was no jurisdictional error on the part of the State Commission dismissing the complaint. The petitioner had filed a civil suit and that was pending on the date of decision of the State Commission. The petitioner could not maintain Public Interest Litigation. The respondent was not indulging in any unfair trade practice through the stated advertisement. The advertisement neither contained any matter nor any statement in any part of advertisement which could be, said to be inconsistent with or detracted from the specified warning. With regard to Bravery Awards, it was contended that there was no advertisement of cigarette in any of the documents of "Red & White Bravery Awards". ON these premises, Mr. Desai, learned Sr. Counsel submitted that the revision petition should be dismissed. Having heard the petitioner as well as Mr. Ashok Desai, we feel that only three points need our consideration: (i) Whether the complaint could be treated on behalf of the teenagers of Distt. Yamuna Nagar and the petitioner could represent them? (ii) Whether there was any unfair trade practice as alleged by the petitioner? and (iii) Whether the proceedings could be allowed in two Forums in respect of one and same Consumer Court and the matter before the Civil Court?

Point No. 1

4. IN so far as point (i) is concerned, the petitioner has referred to Section 2(1)(b)(iv), which reads as under: "Complainant" means- (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or (iii) the Central Government or any State Government; (iv) one or more consumers, where there are numerous consumers having the same interest; (v) in case of death of a consumer, his legal heir or representative who or which makes a complaint;

This Sub-section 2(1)(b)(iv) refers to one or more consumers and accordingly, one or more consumers could file the complaint by showing same cause of action where there are numerous consumers having same interest. Naturally they might have filed a complaint relating to unfair trade practice if it has been adopted by any trader. It is also an admitted fact that the petitioner is not representing a voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force and as such not entitled to file complaint about unfair trade practice to represent other consumers.

5. IT may be further mentioned that the Consumer Protection Act is meant to provide better protection of interests of consumers. Taking into consideration the very purpose of the enactment of the Consumer Protection Act, one cannot ignore that one of the objectives of the enactment of the Consumer Protection Act is to provide for the right of the consumers particularly "the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers". If one reads Clause (iv) of Section 2(1)(b) coupled with the fact

that there are numerous consumers having the same interest, it would appear that the interest of all of them required to be protected may be on the complaint of one or more consumers.

6. IN view of these provisions, one finds it difficult to say that the complainant could not have filed the complaint on the basis of the allegations made. It is altogether different thing that whether the allegations would make out a case of unfair trade practice or not. However, whenever a complaint is filed by one or more consumers complaining against unfair trade practice and it affects numerous consumers a complaint could be filed by one or more consumers. But, it is subject to condition provided in Section 13(6) which provides as under: Where the complainant is a consumer referred to in Sub-clause (iv) of Clause (b) of Sub-section (1) of Section 2, the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a . complaint or the order of the District Forum thereon.

It is not the case of the complainant that he moved any application or obtained any permission under Section 13(6) of the Consumer Protection Act and that permission was granted. In such circumstances, it is not possible for the complainant to represent others. However, in so far as he himself is concerned, he could certainly pursue the complaint in his capacity as consumer.

7. ANOTHER incidental question whether he should deemed to be a consumer also needs our consideration. The case of the complainant as per his affidavit is that the complainant was allured to smoking Red & White Cigarette after reading misleading advertisement of the respondent for the last about twenty years. He himself developed hypertension and he was advised by Dr. Sandeep Gupta on 23.11.1998 to immediately stop smoking. The complainant had become aware of harmful effects of smoking during his graduation but, as stopping smoking was difficult, he continued smoking even after 23.11.1998. After stopping smoking for as many as 3-4 days stretches over last 13 months, he realized that it was not only very difficult to stop smoking but that it caused great morbidity also. The advertisement of type Annexure C-1 was misleading, false and comes within the definition of unfair trade practices. The opposite party is liable to discontinue these unfair trade practices and not to repeat it. The opposite party was liable to pay Rs.5.00 lakh as compensation so as to mitigate the effect of their misleading campaign on teenagers of District Yamuna Nagar. Since he was allured to smoking Red & White Cigarette, therefore, it stands proved that he is a consumer.

8. FOR the aforesaid reasons, he could continue to pursue the complaint as consumer, but on his own behalf only. Point No. 2 Now coming to the next point whether Exb. C-I is misleading and the advertisement relating thereto contained "any matter or statement which is inconsistent or detracts from the specified warning", it is evident that specified warning that "Cigarette smoking is injurious to health" is certainly mentioned in both the packet as well as advertisement.

This specified warning is legible, conspicuous viz-a-viz its size and colour, and it is no body's case that it is not strictly in accordance with Section 4 of the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 (CRP Act for short). It would be essential here to appreciate gravity of the injury which is being suffered by active and passive smokers to understand the need of specified warning and the impact of detraction by camouflaging with the photo of Akshay Kumar coupled with slogan "Red & White smokers are one of a kind", indicating as if smoking Red & White cigarette makes a person superman.

9. THE petitioner has referred to a number of opinions published in the "Indian Express", "Tribune and Journal of IMA, etc. and quoting opinion expressed by WHO as well as the Journal of the Indian Medical Association and several experts. According to one opinion, the opening up of the Indian economy would help spread this "killer tobacco disease". Currently, according to the WHO, tobacco kills four million people annually, and that toll is due to rise to 10 million deaths per year by 2030. "We have to act fast and we have to move ahead in a responsible manner, if we want to save lives" says Dr. Derek Yach, the head of WHO's Tobacco Control Programmes.

10. ACCORDING to an article published in Journal of Indian Medical Association in 1999, WHO study found that worldwide deaths due to smoking could be triple in the next two decades. Altogether, there are more than twenty-five tobacco-related diseases known today and some of them are as under: (1) Acute health risks of tobacco use include shortness of breath, increased heart rate, exacerbation of asthma, impotence, infertility and increased serum carbon monoxide. (2) Long term health risks smoking, the major contributors to morbidity and mortality, include heart attacks and strokes, lung and other cancers (larynx, oral cavity, pharynx, Oesophagus, pancreas, bladder cervix, leukaemia) and chronic obstructive pulmonary diseases (chronic bronchitis and emphysema) (3) Not only the smoking individual but surrounding individuals can be harmed by tobacco smoke. Breathing in other people's smoke has been shown to cause sudden infant death respiratory illness and middle ear disease in babies and children, and lung cancer and heart disease in adults. Children are put to further at risk because smoking by their parents increase the likelihood that they themselves will in time take up smoking.

It would be worthwhile to mention that the statement of Objects and Reasons of the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, inter alia provides "Smoking of cigarettes is a harmful habit and, in course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer, chronic bronchitis; certain diseases of the heart and arteries; cancer of bladder, prostate, mouth, pharynx and oesophagus; peptic ulcer, etc., are also reported to be among the ill-effects of cigarette smoking."

11. SIMILARLY, the Statement of Objects and Reasons of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade

and Commerce, Production, Supply and Distribution) Bill, 2001, provides: "Tobacco is universally regarded as one of the major public health hazards and is responsible directly or indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco-related diseases and the loss of productivity caused therein cost the country almost Rs. 13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry."

In this backdrop the question "Whether the advertisement relating to Red & White Cigarette contained any matter or statement, which is inconsistent with or detracts from the specified warning?" is required to be considered. For the purpose of deciding whether the advertisement contained in the matter or statement which is inconsistent or detracts from specified warning, comparative size of the letters in the impugned statement coupled with smiling face of a smoking stunt master film actor Akshay Kumar, certainly detracts from the small sized letters of the statutory warning for film actor like him having a particular kind of image to do all kinds of film stunts himself would draw much more attention of youth. This could surely make the petitioner and other teenagers to smoke Red and White cigarette believing that if Akshay Kumar could act like a superman and perform stunts without taking assistance from any duplicate stunt master, the specified warning would lose its appeal on smokers both current and those who are standing on the margin be rendered meaningless and an imagination of a crazy person.

12. UNFAIR Trade Practice for the purpose of Consumer Protection Act is defined in Clause (r) (i) of Section (2) and its relevant extracts read as under: "UNFAIR trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: falsely represents that the services are of a particular standard, quality or grade; makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services.

Gives false or misleading facts disparaging the goods, services or trade of another person. Explanation-For the purpose of clause (1), a statement that is- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained.

The petitioner has referred to Sub-section (2) of the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 which provides- "No package of cigarettes or its label or any advertisement relating thereto shall contain any

matter or statement which is inconsistent with, or detracts from, the specified warning." If this provision is read along with Sub-clause (vi) of Clause (1) of Section 2 of the Act, definition of Unfair Trade Practice then one has to hold that in case package or its level or any advertisement contains any matter or statement which is inconsistent with or detracts from the specified warning it would amount to making false or misleading representation concerning the need for, or the usefulness of any goods or services within the meaning of Section 2(r)(i)(vi) of the Consumer Protection Act.

13. ONE should not forget that in terms of judgment in *Murli S. Deora v. Union of India*, VII (2001) SLT 734=AIR 2002 SC 40, and seeing its harmfulness and considering the adverse effect of smoking, the Hon"ble Supreme Court has directed the Union Government as well as State Governments/UTs to take effective steps to ensure prohibiting smoking in public places. This just indicates the need of awareness about the adverse effect of smoking. The CRP Act, 1975 has provided in Section 5 of the Act restrictions on advertisement of cigarettes without specified warning and requires that every specified warning including any advertisement should be conspicuous, legible and prominent. It is not the case of the complainant that the warning published in the advertisements in Hindi and English do not contain a statutory warning. The case of the complainant is that smoking of cigarette by Akshay Kumar with the slogans used in advertisement, would detract the people from the statutory warning. Seeing comparative size of the letters, etc. the statutory warning in our view loses its prominence which is usurped by more prominent and attractive Akshay Kumar et al and is sufficient to detract the attention of the viewers from the statutory warning to the image of Akshay Kumar with the slogan indicating smokers of Red and White cigarette could be super actor performing all the film stunts without duplicates. The term "detract" means reduce or take away the worth or value or of the reduced value.

14. IN the present case the statutory warning though has been shown, yet it leaves an impression that notwithstanding specified warning, if smoking Red and White Cigarette has made Akshay Kumar so healthy smart, and a dare devil stunt master film actor for it is also mentioned in much bolder letters in Hindi Red & White Pinay Walon Ki Baat Hi Kuchh Aur Hai, with a smiling smoking film actor holding a cigarette, then in our view the impression based on this kind of representation is altogether false and misleading. This certainly amounted to unfair trade practice. In so far as the Bravery Award is concerned, no part of the document would amount to advertisement. However, there could not be any dispute about the fact that it is mentioned "The Red & White Bravery Awards".

The learned Counsel for the respondent has also shown a brochure relating to the 12 Bravery Awards. It does not show that "The Red & White Bravery Awards" would amount to an advertisement of Red and White cigarette for it does not relate to the cigarette smokers only and it appeared that many winners were non-smokers.

15. CONSEQUENTLY, we do not find any thing to hold that this Red & White

Bravery Awards detracts from the statutory warning, for two reasons: firstly, it is not an advertisement of a cigarette; and secondly, it certainly had been given to non-smokers as well. Consequently, "The Red & White Bravery Awards" would not detract from the statutorily specified warning. The advertisement relating to Red & White Cigarette Award would neither amount to violation of CRP Act, 1975 nor violative of the provisions of CP Act. Point No. 3

16. AS regards the next point urged by Mr. Desai that the complaint is not maintainable as there was no irregularity or jurisdictional error committed by the State Commission and on this ground this Commission would not be justified in passing any order interfering with the impugned order. We do agree to certain extent with the submission that in an ordinary course, this Commission should not interfere if there was no apparent jurisdictional error or any material irregularity in the order passed by the State Commission on the date when the order was passed. But, at the same time, this Commission could not be oblivious to the fact that application for withdrawal was moved before disposal of the appeal but it remained pending before the Civil Court and the withdrawal of the civil suit subsequently and still further where not only individual but the public at large is likely to be sufferer in the matter like the present one due to unfair trade practice. In such matters, this Commission is supposed to protect larger public interest to further the aims and objects of the Consumer Protection Act. One would not like that this Commission should bind itself by technicalities and more so on the technical ground that after a civil suit application for withdrawal was filed but not disposed but was ordered to be dismissed as withdrawn subsequently, hence, we have no jurisdiction. This argument of the learned Counsel for the respondent begs question; for it may be mentioned here that in terms of Section 3 of the Act, provisions of this Act are in addition to, and not in derogation of the provisions of any other law. It is just a rule of prudence that two proceedings should not be allowed to go simultaneously in a Civil Court as well as Consumer Fora and generally we do not encourage simultaneously filing of a civil suit and complaint before the Consumer Fora to protect the innocent traders. But it does not mean that this Commission would turn a deaf ears and look with a blind eye to the realities of life. Once it has been held that the respondent is guilty of unfair trade practice, the matter is required to be taken to just conclusion to protect a silent majority of poor young vulnerable consumers who are tempted and allured to smoke Red and White Cigarette by seeing the pamphlet. Accordingly, we dispose of this petition with the following directions:

17. THE respondent, M/s. Godfrey Phillips India Ltd. is directed- (i) to discontinue forthwith the unfair trade practice of detracting from the statutorily specified warning and not to publish any advertisements like Ext. "R-1" in any language giving any impression that a person who smokes Red and White Cigarette could perform such acts as could be performed by Akshey Kumar in films and thereby detracting from the specified warning; and (ii) to issue corrective advertisements of equal size in all the newspapers in which advertisements in Hindi and English like Ext. R-1 were published to neutralize the effect of the said impugned

misleading advertisements.

18. SHRI Ajay Kumar, the petitioner, shall be paid a sum of Rs. 20,000 by way of compensation and Rs. 5,000 as cost. The revision petition is disposed of accordingly. Petition disposed of.