
(1983) 02 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 361 of 1980-I

A.S.P. Kurup

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-02-1983

Acts Referred:

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 14, 4

Citation : AIR 1983 Ker 259

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : Mathew Zachariah, for the Appellant; Govt. Pleader, T.R.G. Warriar and M.M. Abdul Aziz, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner in the original Petition is a practising Advocate, and the Treasurer of the All Kerala Consumers' Resistance Movement. In this original petition he challenges the publication of advertisement similar to one in Ext. F2. Ext. P2 is a postal card in which the following is printed;

(Vernacular is omitted--Ed.)

The petitioner also seeks a writ of mandamus commanding the respondents to withdraw and remove all such advertisements. The respondents to this Original Petition are Union of India, Post Master General, Post and Telegraph Department, P. M. G.'s Office, Trivandrum and the State of Kerala, The petitioner alleges that the advertisement is widely published through posters in the Government Hospitals and other offices and in Post Cards similar to the one in Ext. P2 and that such advertisements should be interdicted. It is averred in the original petition that a reading of the advertisement will tempt people to take "chloroquin" whenever they get fever. The effect of the advertisement is to tell people to take Chloroquin whenever they get any fever, even if they have no Malaria. Such an indiscriminate taking of "Chloroquin" is harmful to the health of

the people. The respondents are bound to take care of the people's health and cannot indulge in activities which would prejudicially affect people's health. According to the petitioner in a publication in Indian Express dated 12th January 1980, evidenced by Ext. P1, one Dr. Sukumaran has opined, that Chloroquin is not an absolutely harmless drug. The petitioner asserts that the advertisement in Ext. P2 is misleading and the advertisement is violative of provisions of Drugs and Cosmetics Act and the Rules. It is alleged that the impugned advertisement will do more harm than good and that the petitioner, when he was affected with fever consumed Chloroquin, but there was no improvement. In these circumstances, the petitioner prays for the issue of a writ of prohibition restraining the respondents from publishing advertisements like Ext. P2 and for other reliefs.

2. On behalf of the respondents a detailed counter-affidavit dated 14th December, 1981 is filed. It is averred in the counter affidavit that Malaria was taking a large toll of life and in order to tackle the situation the National Malaria Control Programme was taken up in 1953. As part of the programme, the Government of India wanted to educate the people and provide easy and cheap cure for the disease. As a result of the experiments, it was established that "Chloroquin" with a clinical dose of 4 tablets is an adequate treatment for the clinical cure of Malaria if taken sufficiently early. So in national interest and in order to control and cure Malaria, Government took a decision to give publicity to the use of this drug. Large advertisements containing full details of the drug and its manner of administration are being issued through several media. The advertisement released by the short slogan printed on Post Cards and Inlands is only a part of the publicity programme. It is intended only to alert the public against the possibility of a fever being Malarial and at popularising the drug. The advertisement does not show that Chloroquin should be taken for all types of fever. On the other hand, the advertisement itself indicates that Chloroquin is recommended in case of Malaria fever alone. It is contended in the counter affidavit that the points raised in the original petition are not matters which could be investigated or adjudicated in proceedings under Article 226 of the Constitution. At any rate it is contended that Section 14 Clause (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act 1954 (Act 21 of 1954) makes it clear that an advertisement published by the Government is exempt from all provisions of the Act.

3. Mr. Mathew Zachariah, counsel for the petitioner argued only one aspect arising in this case. According to counsel Section 4(c) of the Act, Drugs and Magic Remedies (Objectionable Advertisement) Act (Act 21 of 1954) prohibits false or misleading advertisements relating to drugs. Counsel contends that the advertisement appearing in Ext. P-2 is misleading in material particular and so there is a clear violation of S. 4(c) of the Act (Act 21 of 1954). In this view the plea is that the petitioner is entitled to the remedies sought for in the Original Petition. Counsel further contends that according to Section 2(b)(ii), drug includes any substance and according to Section 2(b)(iii) drug includes any

article which means even machines of science, etc., Advertised in newspapers since they are articles within the meaning of Section 2(b)(iii) and therefore "drug" for the purpose of the Act. Reliance is placed on the decision reported in Zaffar Mohammad alias Z.M. Sarkar Vs. The State of West Bengal, .

4. On the other hand, counsel for the respondents, Mr. Abdul Azeez emphasises that Section 4(c) of the Act is not attracted in this case. According to counsel, the advertisement in Ext. P-2 is neither false nor misleading in any particular. The advertisement in effect only means that Chloroquin is recommended in case of Malaria fever and not Chloroquin should be taken for all types of fever as contended by the counsel for the petitioner. If the advertisement is not misleading in any material particular, there is no violation of Section 4(c) of the Act. The respondents' counsel also contended that Section 14(d) of the Act states that nothing in the Act shall apply to any advertisement relating to a drug printed or published by the Government. If that be so, even assuming for argument's sake, that the advertisement in Ext. P-2 is misleading, in any material particular, it shall not apply to the advertisement published in Ext. P-2, since it is the one printed and published by the Government. It is true that in construing Section 2(d)(iii), the Supreme Court has in Zaffar Mohammad alias Z.M. Sarkar Vs. The State of West Bengal,) held that machines are articles within the meaning of Section 2(b)(iii) and therefore "drug" for the purpose of the Act. It is also true that in para 4 of the judgment, the Supreme Court has stated regarding the statement of objects and reasons to the Act as follows:

"4. The statement of objects and reasons to the Act says that many an advertisement causes the ignorant and the unwary "to resort to quacks who indulge in such advertisement for treatment which cause great harm"..... It does no violence either to common-sense or to rules of interpretation to say that a machine is an "article"."

The question that falls to be considered in this case is whether the advertisement in Ext. P-2 is either false or misleading in any material particular ? Does the advertisement in Ext P-2 cause the ignorant and the unwary to resort to the drug, for treatments which causes great harm ? The answer can only be in the negative. On a reasonable interpretation or common-sense view of the crucial words in Ext. P-2, I am inclined to accept the submission of the respondents regarding the construction of Ext. P-2, that Chloroquin is recommended in case of malaria fever and not that Chloroquin should be taken for alt types of fever. Moreover, the advertisement is one relating to a drug printed or published by the Government and so the other provisions of the Act will not apply in view of the saving provision contained in Section 14(d) of the Act. The further contention of the petitioner's counsel that the crucial words in Section 14(d) of the Act that "any advertisement relating to a drug" should be interpreted as an advertisement relating to disease and its treatment" also does not carry the matter further. Such an interpretation suggested by counsel call for addition of words in the statute which are absent. Even so, a drug itself has no meaning unless, it is

intended as a preventive or curative for any disease. That flows from a reading of Section 2(b) and its various sub-clauses. Considering the totality of the circumstances, it can be said that Ext. P-2 in terms is an advertisement relating to a disease and its treatment and is fully covered by Section 14(d) of the Act.

5. In the light of the above, the contention of the petitioner that Ext. P-2 is unauthorised or is otherwise objectionable has no force. The original petition is devoid of merit and it is hereby dismissed with no order as to costs.