
(1999) 02 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL OF INVESTIGATION And REGISTRATION

APPELLANT

Vs

O.P. BAGGA

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : 1999 3 CPJ 34

Hon'ble Judges : S.K.Parthasarathy J.

Final Decision : Enquiry discharged

Judgement

1. A Notice of Enquiry (NOE) was issued against Dr. O.P. Bagga, Delhi (the respondent) on the basis of an application filed by the Director General of Investigation and Registration (the DG) under Section 36B(c) of the Monopolies & Restrictive Trade Practices Act, 1969 (for brief the Act).

2. THE facts of the case leading to the NOE are very briefly summarised as below. The respondent had issued advertisement in April, 1985 claiming that both males and females could increase their height by 2 to 5 cms. and upto 10 cms, without physical exercise and Yoga through his treatment. With reference to this the Commission had passed an order on 9.2.1993 in UTPE No. 40/85 discharging the NOE with the observation that the impugned advertisement or similar advertisement by the respondent in future might be subjected to de novo enquiry by the Commission. This order was passed by the Commission as the material brought on record was not sufficient to hold the respondent guilty. The respondent again issued the advertisement during February-May, 1997 making similar claims in which he had stated that his claim was "tried-tested-trusted under the MRTP Act". The DG filed the present application under Section 36B(c) of the Act again in which he pointed out that on the earlier occasion the Commission had left the issue for future consideration and the statement of the respondent describing his claim as "tried- tested-trusted under the MRTP Act" was highly deceptive, wrong and misleading and amounts to unfair trade practice.

During the enquiry in this case the respondent filed an application under Section 36D(2) of the Act in which he has stated that he will not make any claim to the

effect that his claim is "tried, tested or trusted under the MRTP Act" or that his claim is "tried, tested and trusted by the Government under M.R.T.P. Act". The respondent has also undertaken not to advertise any further to the said effect. The respondent also has submitted that he shall cease and desist from proclaiming that his claim is tried, tested and trusted under the M.R.T.P Act or that his claim is tried, tested and trusted by the Government under the M.R.T.P Act".

3. I heard the arguments of both Mr. V.K. Mehata, Advocate for the DG as well as Mr. N.K. Khetarpal, Advocate for the respondent on the application filed by the respondent under Section 36D(2) of the Act. Mr. Mehta, Advocate for the DG pointed out that in view of the undertaking given by the respondent, he would not oppose the acceptance of the application filed by the respondent. However, he pointed out that in the earlier order of the Commission dated 9.2.1993 it was pointed out that "we are leaving the issue open for future consideration if and when it becomes necessary to order a fresh enquiry. The respondent if he decides to continue with the same or similar advertisement shall be doing so at his own risk or risks. In fact the respondent will be well advised to tone down the tenor of his advertisement appropriately to avoid being hauled up for making excessively inflated and exaggerated claims". Mr. V.K. Mehta, Advocate for the DG argued that the present enquiry was directed only against the statement of the respondent, i.e. claim regarding the treatment was "tried-tested-trusted under the MRTP Act" and there has been no enquiry regarding other claims. The respondent is, therefore, bound by the earlier order of the Commission dated 9.2.1993 and the acceptance of the application under Section 36D(2) of the respondent by the Commission cannot become res judicata if at a later date any complaint is filled regarding the claims made by the respondent in future. I entirely agree with the contention of the Advocate for the DG and the Advocate for the respondent also appreciated that the present order only disposes of the charge against the respondent relating to the claim that it was "tried-tested-trusted under the MRTP Act". In view of what is stated above, the application submitted by the respondent under Section 36D(2) of the Act is accepted subject to the observations above. In the result, the NOE issued in this case against the respondent is discharged. There is no order as to costs. Enquiry discharged.