

(2013) 04 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 8450 of 2012

GMT Teleshopping Private Limited

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(1)(a), 19(2)
Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 2, 3, 3(d)

Citation : (2013) 4 ABR 184 : (2013) 5 ALLMR 41 : (2013) 5 MhLj 661

Hon'ble Judges : Mridula Bhatkar, J;A.S. Oka, J

Bench : Division Bench

Advocate : Aspi Chinoy and B.N. Poojari instructed by Asian Patent Law, for the Appellant; G. Hariharan instructed by y Dr. T.C. Kaushik, A.A. Kumbhakoni and Mrs. M.P. Thakur, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—The petitioner company carries on business, inter alia, of retail/direct marketing of products. It is stated that the petitioner is marketing a product known as "STEP-UP Body Growth Formula" manufactured by M/s. Siddhi Vinayak Herbals at village Anandnagar, Gwali Palasiya, Tehsil Mhow, District Indore, Madhya Pradesh. There is a license issued by the Licensing Authority, the Indian System of Medicine & Homeopathy, Madhya Pradesh to M/s. Siddhi Vinayak Herbals to manufacture SETUP Body Growth Formula Powder which is a proprietary ayurvedic medicine. The petitioner has stated that the said license has been issued on 29th January, 2011. The petitioner got scripts prepared for advertising the said product on television channels. The petitioner by this petition has challenged the action of the Food and Drugs Administration of the State of Maharashtra of issuing communications to various television channels. By the said communications, the channels have been informed that under the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (hereinafter referred to as the said Act of 1954), no person shall take any part in

the publication of any advertisements referring to any drugs which in terms suggest or are calculated to lead to the use of that drug for diagnosis, cure, mitigation, treatment or prevention of any disease or disorders or condition specified in the schedule of the said Act of 1954. The channels were directed to stop telecasting of the advertisements of the said product sold by the petitioner. The prayer in this petition is for quashing said communications issued to various television channels. There is a reply filed by Shri V.A. Jawadekar, the Assistant Commissioner in the office of the Food and Drug Administration, Government of Maharashtra on behalf of the second to seventh respondents. In the reply, a reliance is placed on Clause (d) of sub-section (3) of the said Act of 1954. It is contended that the advertisement of the said product by the petitioner squarely falls within the prohibition imposed by Section 3 of the said Act of 1954.

2. The learned senior counsel appearing for the petitioner submitted that the prohibition u/s 3 of the said Act of 1954 extends only to harmful and/or prohibited drugs. He submitted that the product SETUP body growth formula is not a harmful drug. It is contended that it is not a prohibited drug. He pointed out that none of the notices/communications have been addressed to the petitioner or to manufacturers of the product and the same have been directly addressed to the television channels. The learned senior counsel submitted that as the product is being manufactured under a license duly granted by the Government of Madhya Pradesh under the provisions of the Drugs and Cosmetics Act, 1940, the same cannot be termed as a prohibited drug.

3. The learned senior counsel appearing for the petitioner relied upon a decision of the Apex Court in the case of Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, He urged that as held by the Apex Court, a commercial advertisement is protected under Clause (a) of Article 19(1) but is subject to Article 19(2) of the Constitution of India. He submitted that a commercial speech which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) of the Constitution of India. He pointed out that the Apex Court in the decision in the case of Tata Press Limited (supra) has dealt with its earlier decision in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, . He pointed out that in fact the Apex Court has distinguished the said decision. He invited our attention to Paragraph 18 of the said decision in the case of Tata Press Limited which holds that the Apex Court in the case of Hamdard Dawakhana (supra) was dealing with the advertisement of a prohibited drugs and commodities. He submitted that in Hamdard Dawakhana (supra), the Apex Court observed that the advertisement by itself could not come within Clause (a) of Article 19(1) of the Constitution of India. He submitted that the decision in the case of Hamdard Dawakhana (supra) was explained in the subsequent decision of the Apex Court in the case of Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others, He urged that in Paragraph 19 of the decision in the case of Tata Press Limited (supra), the Apex Court held that the "combined reading of Hamdard

Dawakhana case (supra) and the Indian Express Newspapers case (supra) shows that a commercial speech cannot be denied the protection of Clause (a) of Article 19(1) of the Constitution of India and unless the product is either harmful or prohibited drug or unless the advertisement amounts to distortion of facts, the fundamental rights guaranteed under Clause (a) of Article 19(1) of the Constitution of India cannot be defeated. He submitted that if any other interpretation is adopted, the provisions of the said Act of 1954 and in particular Section 3 thereof will not stand the test of constitutional validity. He submitted that in arty case, in the case of Tata Press Limited (supra), the Apex Court held that in the case of Hamdard Dawakhana (supra), the Apex Court decided the issue of the constitutional validity of the said Act of 1954 while dealing with the advertisement of a prohibited drug. The learned counsel appearing for the second to seventh respondents supported the impugned communications/orders. He urged that the petitioner has no locus as the petitioner is not the manufacturer of the drug. Inviting our attention to the definition u/s 2 of the said Act of 1954 and to the provisions of Section 3 of the said Act of 1954, he submitted that the applicability of the Act is not confined only to the prohibited drugs but the Act applies even to those drugs which are licensed. He submitted that the prohibition created by Section 3 of the said Act of 1954 is in relation to the publication of any advertisement falling in categories (a) to (d) therein irrespective of the fact whether the drug which is advertised is prohibited or not. He pointed out that in the present petition, there is no challenge to the constitutional validity of the provisions of the Clause (d) of Section 3 of the said Act of 1954.

4. We have carefully considered the submissions. It will be necessary to make a reference to the definition of the drug in Section 2 of the said Act of 1954. Clause (b) of Section (2) of the said Act of 1954 reads thus:-

(b) Drug includes-

- (i) a medicine for the internal or external use of human beings or animals;
- (ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;
- (iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;
- (iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii);

We may also make a useful reference to Section 3 of the said Act of 1954 which reads thus:-

3. Prohibition of Advertisement of Certain Drugs for Treatment of Certain Diseases and Disorders.--Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for-

- (a) the procurement of miscarriage in women or prevention of conception in women; or
- (b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or
- (c) the correction of menstrual disorder in women; or
- (d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act:

Provided that no such rule shall be made except,-

- (i) in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, and
- (ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 (23 of 1940) and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.]

5. On plain reading of Clause (b) of Section 2 of the said Act of 1954, Section 3 thereof applies to all categories of drugs, whether they are licensed or not and whether they are prohibited or not. Section 3 imposes a prohibition on taking any part in the publication of any advertisements referring to any drug which in term suggest or are calculated to lead to the use of that drug for the purposes specified in Clauses (a) to (d) of Section 3 of the said Act of 1954. Clause (d) thereof is applicable when the advertisements suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the schedule.

6. At this stage, it will be necessary to make a reference to the schedule. Serial No. 47 of the Schedule includes a condition "stature of persons." Therefore, if any advertisements referring to any drug which suggest or are calculated to lead to the use of that drug for the treatment of stature of persons, the prohibition u/s 3 comes into picture.

7. Before, going to the factual aspects of the matter it will be necessary to deal with the submissions made by the learned senior counsel appearing for the petitioner on the basis of the decision in the case of Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others,

8. For dealing with the said submissions, we may also make a reference to the decision in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, The first

paragraph of the said decision records that in the petition before the Apex Court, the question of constitutionality of the said Act of 1954 was raised. After having perused the entire judgment, it is apparent that the judgment does not deal with only the advertisements of prohibited drugs and commodities. Ultimately, the Apex Court held that the following words of Clause (d) of Section 3 were ultra vires "or any other disease or condition which may be specified in the rules made under this Act." In Paragraph 35, the Apex Court held that the aforesaid portion was unconstitutional. As the said words were severable, the rest of the Section 3 was held as valid. At this stage, we may make a useful reference to the decision of the Tata Press Limited (supra). The issue which arose before the Apex Court was whether the appellant Tata Press Limited before the Apex Court had a right to print, publish and circulate a compilation called Tata Yellow Pages. A suit for injunction was filed by the Mahanagar Telephone Nigam Limited against the appellant Tata Press Ltd. The suit was dismissed by the Trial Court. This Court interfered in an Appeal and decreed the suit. The decree for injunction passed by the learned single Judge of this Court in the first appeal was confirmed by a Division Bench in the Letters Patent Appeal. The contention raised by the appellant before the Apex Court was that a commercial speech is protected under Clause (a) of Article 19(1) read with Article 19(2) of the Constitution of India. A reliance was placed by the respondents before the Apex Court on the observations made in the decision in the case of Hamdard Dawakhana (supra) and in particular Paragraph 17 thereof. In Paragraph 17 of the decision in the case of Hamdard Dawakhana (supra), the Apex Court observed thus:-

An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19(1) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such a case, advertisement is a part of business even though as described by Mr. Munshi its creative part, and it was being used for the purpose of furthering the business of the petitioners and had no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution....

(Underline added)

9. In Paragraph 11 of the judgment of the Apex Court in the case of Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, the Apex Court observed that in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B.

Choudhri and Another Vs. The Union of India (UOI) and Others, the Apex Court upheld the proposition that purely commercial advertising is not protected by Clause (a) of Article 19(1) of the Constitution of India. After considering the subsequent judgments of the Supreme Court of the United States, in Paragraph 11 the Apex Court held thus:-

11. This Court in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, primarily relied on the judgment of the United States Supreme Court in *Valentine v. Chrestensen*, (1941 (86) Law Ed 1262 for the proposition that "purely commercial advertising" is not protected by Article 19(1)(a) of the Constitution. Dr. Singhvi has placed reliance on series of judgments of the United States Supreme Court since 1942 when Chrestensen's case was decided to show that the Courts in United States have step-by-step moved away from the Rule in Chrestensen's case, and as on today "purely commercial advertising" is entitled to full "First Amendment/protection. We may refer to some of the cases, In 1964 United States Supreme Court ruled in *New York Times v. Sullivan* (1964) 376 US 254, that editorial advertising, that is advertising to promote an idea such as "Save Whale". "Stop War" or "Ban Pesticides" rather than a product like used ears or spaghetti is protected by the First Amendment. In the year 1975 in *Bigelow v. Virginia*, 1975 421 US 809) the United States Supreme Court reversed the conviction of a Virginia newspaper editor who had been found guilty of publishing an advertisement which offered assistance to women seeking abortion. Abortion was illegal in Virginia in 1971 when the advertisement was published. The Women Pavilion, a New York group, urged women who wanted an abortion to come to New York. Blackmun, J. analysing earlier judgments of the Court observed that speech does not lose the protection of the First Amendment merely because it appears in the forms of a commercial advertisement.

10. In paragraphs 18 and 19 of the decision in the case of *Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others*, , the Apex Court observed that the decision in the case of *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, was considered by the said Court in the case of *Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others*, of the said decision read thus:-

18. This Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, was dealing with advertising of prohibited drugs and commodities. The Court came to the conclusion that the sale of prohibited drugs was not in the interest of the general public and as such "could not be speech" within the meaning of freedom of speech and expression under Article 19(1)(a) of the Constitution. The Court further held in the said case that an advertisement is no doubt a form of speech but its true character is

reflected by the object for the promotion of which it is employed. Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, was considered by this Court in Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others, : I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) . The observations in Hamdard Dawakhana's case to the effect that advertising by itself would not come within Article 19(1)(a) of the Constitution, were explained by this Court in Indian Express Newspaper's case, (AIR 1986 SC 515) : [1986] 159 ITR 856, in following words:

We have carefully considered the decision in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, The main plank of that decision was that the type of advertisement dealt with there did not carry with it the protection of Article 19(1)(a). On examining the history of the legislation, the surrounding circumstances and the scheme of the Act which had been challenged there namely the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954(21 of 1954) the Court held that the object of that Act was the prevention of self-medication and self-treatment by prohibiting instruments which may be used to advocate the same or which tended to spread the evil.

In the above said case the Court was principally dealing with the right to advertise prohibited drugs, to prevent self-medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the right to publish at commercial advertisements. Such broad observations appear to have been made in the light of the decision of the American Court in Lewis J. Valentine v. F.J. Chrestensen, (1946 (86) Law Ed 1262). But it is worthy of notice that the view expressed in this American case has not been fully approved by the American Supreme Court itself in its subsequent decisions. We shall refer only to two of them. In his concurring Judgment in William B. Cammarano v. United States of America (1959) 338 US 498. Justice Douglas said:

Valentine v. Chrestensen. held that business of advertisements and commercial matters did not enjoy the protection of the First Amendment, made applicable to the States by the Fourteenth. The ruling was casual, almost off hand. And it has not survived reflection.

In Jeffrey Cole Bigelow v. Commonwealth of Virginia, ((1975) 421 US 809) the American Supreme Court held that the holding in Lewis J. Valentine v. F.J. Chrestensen (supra) was-distinctly a limited one. In view of the foregoing, we feel that the observations made in the Hamdard Dawakhana's case (supra) too broadly stated and the Government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1)(a) of the Constitution merely because they are issued by

businessmen.

19. The combined reading of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, and the Indian Express Newspaper's case (AIR 1986 SC 515) : I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) leads us to the conclusion that "commercial speech" cannot be denied the protection of Article 19(1)(a) of the Constitution merely because the same are issued by businessmen.

(Underlines added)

11. The learned senior counsel appearing for the petitioner relied upon the observations in the first sentence of Paragraph 18 of the judgment that the Apex Court in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, was dealing with the advertisement of prohibited drugs and commodities. However, in our view, the learned senior counsel was unable to show that in the case of Hamdard Dawakhana (supra), the Apex Court was dealing only with the advertisement of prohibited drugs and commodities. The ratio of the decision in Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, is that notwithstanding the Hamdard Dawakhana (supra), a commercial speech cannot be denied the protection of Clause (a) of Article 19(1) of the Constitution of India.

12. However, it will be necessary to make a reference to Paragraph 17 of the decision of this Court in Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited and Others, which reads thus:-

17. Unlike the First Amendment under the United States Constitution, our Constitution itself lays down in Article 19(2) the restrictions which can be imposed on the fundamental right guaranteed under Article 19(1)(a) of the Constitution. The commercial speech which is deceptive, unfair, misleading and untruthful would be hit by Article, 19(2) of the Constitution and can be regulated/prohibited by the State.

(Underline added)

13. In the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, the Apex Court has considered the object of the said Act of 1954. In Paragraph 23, while dealing with the definition of advertisement, it is observed thus:

23...If the purpose of the Act is to prevent objectionable and unethical advertisements in order to discourage self-medication and self-treatment it cannot be said that the definition is too wide keeping in view the object and the purpose of the Act which have been set out above. It is these evils which the Act

seeks to cure and if the definition of the word "advertisement" was not so broad and inclusive it would defeat the very purpose for which the Act was brought into existence.

(Underline added)

14. In the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, in Paragraph 25, the Apex Court observed that:

25...If the purpose is to discourage self-medication and encourage treatment by properly qualified medical practitioners then such a regulatory provision cannot be considered an excessive restraint.

15. In Paragraph 28, the Apex Court proceeded to observe that:--

28...It has not been shown in the present case that under the guise of protecting public interest the Act arbitrarily interferes with private business or imposes unreasonable restrictions. If the true intention of the Act is. as indeed it is to stop objectionable and unethical advertisements for the purpose of discouraging self-medication no question of unreasonable restrictions arises.

(Underline added)

Thus, the Apex Court in the case of Hamdard Dawakhana (supra) expressly held that the restriction imposed by the said Act of 1954 on advertising was a reasonable restriction considering the object of the Act of discouraging self-medication. In any event, there is no challenge to the constitutional validity of the said Act of 1954.

16. Adverting to Clause (b) of Section 2 of the said Act of 1954, it becomes crystal clear that it applies to a drug as defined therein whether it is prohibited or not. In this Petition, we are concerned with the drug within the meaning of the definition which is no doubt manufactured under a license. In the affidavit of Shri V.A. Jawadekar, the Assistant Commissioner in the office of the Commissioner for Food and Drug Administration, he has extracted the contents of the advertisements in Paragraph 10 of his affidavit. There is a rejoinder filed by the Petitioner. While dealing with Paragraph 10 of the affidavit-in-reply, in Paragraph 11 thereof, the Petitioner has not disputed the correctness of what is quoted by the Assistant Commissioner in his affidavit. The relevant portions in Paragraphs 10 and 11 thereof read thus:--

10. Apke sath bhi yahi hota hai? Apko bhi lagta hai na bhagvan ne mere sharer ka thoda aur accha vikas kiya hota. Thodi aur growth de di hoti. To kitna accha hota, Personality ban jati. Haad to tab hoti hai jab aap man hi man compromise karne lagte hai. Chalo aisi growth nahi aisi hi mil jati.

11. Hello and welcome To GTM. Me hu Vedita. Friends agar aap apne body growth se khush nahi hai aur ache personality valo ko dekh kar kash kash karte

rahte hai, Hazaro tarah ki Pills aazmakar exercises karke sare dave aur vade sunkar aur aazmakar thak chuke hai fir bhi body par ek inch ka bhi fark nahi aaya hai to aaj yeah program aapke liye hi hai, ant dekhye aur apne problems ka solution paye.

Aaj hum aapke live lave hai ek aisa product jisko use karne ke bad apke body ko aisi health milegi ki aapke confidence hundred percent rahega. Bhid me aap alag dekenge, aapke impression aisa jamega ki koi aapko bhul nahi payega aur vo Formula hai Step Up Herbal Body Growth Formula.

GTM Lab me varsho ki research ke bad ye discover kiya gaya ki insane ke aviksit sharer ko umar ke kisse bhi mod par vikast kiya ja sakta hain. Isi ko dhyan me rakh kar Himalaya aur Africa k jungle me paye jane vale kuch durlabh jadibutiyan jaise aagan, vidhar, chandrashur, helo aadi ko ek khas anupat me mila kar tayar kiya gaya hai Step Up Herbal body Growth Formula.

Aapka ek achi personality ke liye tarsna bilkul wajib hai, kyuki first impression is the last impression. Badhiya personality wale log Automatically sabka dhyan aakarshit karte hai aur bhid me sabse alag nazar aate hai, unhe aapne presence ko prove nahi karna padhta hai, hai na.

(Underlines added)

17. In Exhibit B1 to the petition, the contents of various advertisements of the product of the petitioner have been set out. On reading the contents of the advertisements, in our view, the advertisements present the drug to public at large as a drug which will enhance the overall personality of an individual. Exhibit B-1 to the petition shows that (Page 33, Item two) it is projected that the use of medicine will increase the height of a person. Clause (d) of Section 3 of the said Act of 1954 prohibits publication of any advertisements referring to any drug which in terms suggest or are calculated to lead to the use of that drug for diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule. Perusal of the Schedule shows that Item No. 47 is "stature of persons". The advertisements profess that the drug will help in treatment of the condition of stature of persons. It is pertinent to note that the drug which is advertised need not be a dangerous or harmful to attract Section 3(d). In Paragraph 21 of the affidavit of Shri V.A. Javadekar, Assistant Shri V.A. Jawadekar, the Assistant Commissioner in the office of the Food and Drug Administration, it is mentioned that the licensing authority has approved the subject drug as tridosh-nashak and helpful in body development and not for growth of stature of a person viz.; height and personality. The object of the said Act of 1954 is to prevent self medication. It would not be out of place to mention that television is a very powerful visual medium which is easily available in the houses of common people and therefore, it has tremendous viewer ship in all the classes. It includes large Sections of illiterate, nibe, innocent people who may believe the advertisement to be true. In the facts of the case, as held above, the prohibition under Clause (d) of Section 3 of the said Act of 1954 is squarely

attracted.

18. We may note here that in the present case, there is no challenge to the vires or validity of any of the provisions of the said Act of 1954. Even if the impugned advertisements can be termed as commercial speech, the same have been prohibited under Clause (d) of Section 3 of the said Act of 1954. Clause (d) amounts to a reasonable restriction as held in the case of Hamdard Dawakhana (supra).

19. Hence, we do not see any illegality in the impugned communications. There is no merit in the petition and the same is accordingly rejected.