

(2001) 06 DEL CK 0027

In the Delhi High Court

Case No : Civil Writ Petition No. 354 of 1992 and C.M. No. 565/92

Nestle (India) Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 36A(3)
Monopolies and Restrictive Trade Practices Commission Regulations, 1974 —
Regulation 11, 57, 58, 65, 67

Citation : (2001) 4 AD 978 : (2001) 93 DLT 412 : (2001) 60 DRJ 8

Hon'ble Judges : Om Prakash Dwivedi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. Ashok Desai, Mr. Aditya Narain, Mr. Alok Prasad and Mr. Agnipushp, for the Appellant; Ms. Geeta Luthra and Ms. Pinky Anand, for the Respondent

Judgement

Anil Dev Singh, J.—The Director General, Investigation and Registration, filed an application u/s 36B(c) of the Monopolies and Restrictive Trade Practices Act, 1969 (for short "the MRTP Act") before the Monopolies and Restrictive Trade Practices Commission (for short "the Commission") on May 19, 1988 with the allegation that the petitioner company, formerly known as Food Specialities Ltd, issued an advertisement in the Tribune dated April 4, 1988 announcing the holding of a contest under the caption "Nescafe-Shake-take a cool break contest" for promoting sale of Nescafe Coffee and as per the terms of the advertisement each single entry was required to be accompanied by a inner seal of a Nescafe 50 gms jar or any empty 50 gms refill pack thereof.

2. Pursuant to the application, the Commission on July 7, 1988 issued a notice under Regulation 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974 (for short "the Regulations") to the petitioner calling upon it to comply with the requirement of Regulations NO. 11, 57, 65, 67 and 84A in case it wished to be heard in the proceedings. The notice also stated that the petitioner had prima facie indulged in an unfair trade practice within the

meaning of section 36A(3)(b) of the MRTP Act thereby causing loss or injury to the consumers. The petitioner being aggrieved of the aforesaid notice has filed the instant writ petition.

3. It is not disputed that apart from the bald statement contained in the notice that the petitioner indulged in an unfair trade practice within the meaning of section 36A(3)(b) of the MRTP Act resulting in loss or injury to the consumers, there was, however, no reference to any evidence in support thereof indicating such a loss or injury to the consumers. The notice was not accompanied by any material substantiating the allegation.

4. At this stage, it will be convenient to set out section 36A of the MRTP Act, as it stood at the relevant time, to the extent it has a bearing on the issue in question:-

"36A. Definition of unfair trade practice.- In this Part, unless the context otherwise requires, "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 services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise, namely :-

(1) the practice of making any statement, whether orally or in writing or by visible representation which, -

xx xx xx (2)

(3) permits -

(a)

(b) the conduct of any contest, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

xx xx xx "

5. On a reading of the aforesaid provision, it appears to us that before a trade practice can be dubbed as an "Unfair Trade Practice", there should be material or evidence to show that the consumer suffered loss or injury due to the adoption of the trade practice for promoting sale, use or supply of any goods or for the provision of any services. The notice in question was not accompanied by any material in support of the allegation that holding of "Nescafe-Shake-take a cool break contest" caused loss or injury to the consumers. The charge that the petitioner was called upon to answer gave no details on the basis of which the same was made. Only saying that a trade practice had caused loss and injury was not enough. The material in support thereof was also required to be furnished to the person against whom the charge was leveled. Merely affording an opportunity to the notice to file a reply to the notice under regulation 58 of the Regulations would be an empty formality in case the notice is not furnished

with the evidence or material on the basis of which it was claimed that the trade practice followed by him caused loss and injury to the consumer. The opportunity provided to file a reply to the notice ought to be real and not illusory. In *Raymond Woollen Mills Ltd. v. Monopolies and Restrictive Trade Practices Commission and others*, 1982 TAX.L.R. 2590, wherein the notice issued under sub-clause (iv) of clause (a) of section 10 of the MRTP Act was in question, it was observed by the Bombay High Court as under :-

"10. The said notice contains allegations of acts which constitute restrictive trade practices within the meaning of that term as defined in the Act, which allegations, if true, would expose the appellants to serious civil consequences as mentioned above. What is, Therefore, alleged against the appellants is improper conduct in the context of the statute with reference to which such conduct was charged against them. In *Union of India v. Pandurang kashinath More*, 1962 SC 630, the Supreme Court, after referring with approval to the observations of Lord Selborne in *John Wallingford v. The Directors of the Mutual Society and the Official Liquidator thereof*, (1880) 5 AC 685 , and of the Judicial Committee of the Privy Council in AIR 1937 146 (Privy Council) observed: "It is well known that when an improper conduct is alleged it must be set out with all particulars." It is elementary that when a person is called upon to meet a charge made against him he must not only know what that charge is but the facts on the basis of which this charge is made. Generic terms and general allegations cannot take the place of a specific charge. In this context the following observations of Lord Selborne in *John Wallingford's* case, referred to earlier, and which were quoted with approval by the Supreme Court in *Pandurang Kashinath More's* case, are pertinent.

"With regard to fraud, if there by any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice."

The Judicial Committee of the Privy Council in the *Bharat Dharma Syndicate Limited v. Harish Chandra* observed as follows :-

" "Their Lordships desire to call attention to the great difficulty which is occasioned both to persons charged with fraud or other improper conduct, and to the tribunals which are called upon to decide such issues, if the litigant who prefers the charges is not compelled to place on record precise and specific details of those charges."

In the present case the matter ought not to have been allowed to be proceeded with unless full particulars of the allegations made in the said notice were furnished to the appellants."

6. Reverting to the instant case, one finds that the allegation contained in the notice is completely vague and lacking in particulars.

7. In view of the aforesaid discussion, we are of the opinion that the notice issued to the petitioner is not in accordance with law. This being so, the notice needs to be quashed.

8. Accordingly, the writ petition succeeds and the rule is made absolute. The impugned notice of enquiry dated July 7, 1988 is hereby quashed.