

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1314 OF 2015

TVC Sky Shop Ltd. .. Petitioner
Vs
The State of Maharashtra and Anr. .. Respondents
—
Shri N.V. Pradhan i/by Ms Subhada D. Khot for the Petitioner.
Shri V.S.Gokhale, AGP for the Respondents.
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CORAM : A.S. OKA & A.PBHANGALE, JJ
DATED : 26TH MARCH 2015

PC.

. Heard learned counsel appearing for the Petitioner and the learned AGP for the Respondents. The challenge in this Petition under Article 226 of the Constitution of India is to the communication/order dated 12th January 2015 (Exhibit-F to the Petition).

2. The Second Respondent, who is the Author of the said communication, has tendered an affidavit dated 23rd March 2015. It will be necessary to make a reference to the Paragraph Nos.3 to 5 of the said affidavit, which read thus:

“3. I state that the said letter is addressed to the petitioners, with a good intention to make him aware that his action is prohibited by section 2 (b)(iii) of the Drugs and Magic Remedies (Objectionable Advertisement) Act 1954.

4. I state that it for petitioner to take the letter in good spirit or to ignore the same. It is left to him. It is made clear that if petitioners alleged activities continue then the necessary legal action will be initiated against him.
5. I state that as the letter dated 12.01.2015 is in the nature of advice, the petitioner, failed by the petitioner should not be entertained. I state that prohibition is imposed by the act itself, and the of issuance of the letter to make the petitioner aware. In view of this clarification petition should not be entertained and rejected.”

3. The Second Respondent has now come out with the case that the communication dated 12th January 2015 is not an order but it is merely an advise. \

4. However, we find from the communication dated 12th January 2015 that the Second Respondent has purported to issue a direction to the Petitioner not to advertise. From the phraseology used in the said communication, it cannot be said that what was sought to be done was to give mere advise. Now the affidavit of the Second Respondent makes it clear that the communication dated 12th January 2015 contains no direction or order, but it is merely in the nature of an advise. It is obvious that the Second Respondent while acting in his official capacity could not have rendered any advise to the Petitioner. Hence, the impugned communication cannot be acted upon.

5. Hence, in view of the statements made in the affidavit-in-reply, we dispose of the Petition by passing the following order.

ORDER :

- (a) We direct that the communication dated 12th January 2015 (Exhibit-F to the Petition) is inoperative and the same shall not be acted upon;
- (b) The Petition is disposed of on above terms.

(A.PBHANGALE, J)

(A.S. OKA, J)