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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 07.02.2020

+ W.P.(C) 9823/2017

SAMEER JAIN & ANR Petitioners

Through: Petitioner No.2 in person

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Vikas Mahajan, CGSC with

Mr.Aakash Varma, Adv. for UOI

Mr. Kavindra Gill, GP for R-1, 2 & 4

Mr. Jatin Bhatt, Adv. for R-3

Mr. Kumar Manish & Mr. Kushagra Kumar, Advs.
for R-5

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Public Interest Litigation has been preferred with the following prayers:

“(i) DECLARE that the abdication of its essential legislative function by MIB/ Respondent No. 1 by appending the ASCI Code in Cable Television Network Rules, 1994 is unconstitutional and hence void.

(ii) DIRECT the MIB/ Respondent No. 1 to clarify the role of CCC of ASCI/ Respondent No. 5 in enforcing Rule 7(9) of the Cable Television Network Rules, 1994.

(iii) DECLARE that the appointment of ASCI/ Respondent No. 5 as the Executive Arm of DCA/ Respondent No.2 to inquire and adjudicate complaints related to misleading advertisements through a memorandum of understanding amounts to impermissible delegation of power and is hence void.

(iv) DECLARE that the delegation of judicial function of inquiring and adjudicating misleading advertisements on behalf of FSSAI/ Respondent No. 3 through a memorandum of understanding amounts to impermissible delegation of power and is hence void.

(v) DECLARE that the delegation of judicial function of investigating and adjudicating misleading advertisements on behalf of Ministry of AYUSH/Respondent No. 4 through a memorandum of understanding amounts to excessive delegation of power and is hence void.

(vi) PASS any appropriate order or direction of any order in the nature of a writ under Article 226 of the Constitution of India directing Respondent Nos. 1-4 to furnish before this Hon'ble Court, the source of their authority to confer the 'adjudicating powers' on ASCI/Respondent No. 5.

(vii) DECLARE that the procedure adapted by Respondent No. 5 to process complaints against misleading advertisement is in violation of principles of natural justice and hence void.

(viii) Further CLARIFY the ambit of functions and scope of authority of ASCI/ Respondent No. 5.

(ix) Any other further orders as are deemed fit in the interest of justice."

2. Having heard the petitioner in person and counsel for the respondents and looking to the facts and circumstances of the case, it appears that the main grievance ventilated by the petitioners is regarding excessive delegation of powers given to Advertising Standard Council of India (hereinafter referred to as ASCI for the sake of brevity). Petitioner in person submitted that ASCI is a private body which is adjudicating upon the complaints about the unfair and misleading advertisements and passing

orders therein. Hence, ASCI is exercising these powers which in fact vest with the Government, therefore, it tantamounts to exercise of excessive delegation of powers. Because of this ASCI, is adjudicating upon the complaints of unfair and misleading advertisements and passing orders therein for stopping further publication of so-called unfair advertisements. It is pointed out by the petitioner in person that in “Drugs and Cosmetics Act, 1940” and such other Acts, Government is required to take decision about unfair and misleading advertisements and this power is not delegated to any private body.

3. Counsel appearing for respondent No.5 – ASCI submitted that detailed counter affidavit has been filed in this writ petition by respondent No.5 wherein it has been stated that they are not acting as adjudicating authority at all. In fact, they are merely a recommendatory and self-regulatory body. Moreover, the recommendations of this body are binding to the members of ASCI only.

4. Learned counsel appearing for the Union of India submitted that they are denying that there is any delegation of excessive powers given to ASCI by the Union of India for adjudication of the advertisements. Counsel appearing for Union of India has also placed reliance on Rule No.7(a) of Cable Television Networks Rules enacted under Cable Television Networks Act, 1995 and submitted that ASCI is merely a recommendatory body and ultimately Union of India takes the final decision on its recommendations.

5. Having heard the both sides and looking to the counter affidavits filed by the respondents, it appears that respondent No.5 – ASCI is merely a

recommendatory body. Paras 12, 14 and 26 of the counter affidavit filed by respondent No.5 read as under:

“12. I say that the main objects of ASCI are inter alia to monitor, administer and promote the standards of advertising practices in India with a view to ensuring the truthfulness and honesty of representations and claims made through advertising and safeguarding against misleading advertisements. I say that ASCI provides a machinery through an independent body, whose recommendations are binding within the ASCI, which is known as Consumer Complaints Council (CCC) which receives and examines complaints against advertisements vis-a-vis the ASCI Code. CCC of ASCI comprises of majority of members from civil society; that is 4/7 represent civil society and 3/7 represent members of ASCI. Civil Society members of the CCC are of eminence and represent diverse fields such as consumer /children/ youth-activists, lawyers, educationists, consultants, journalists, Doctors, etc.

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14. I say that in view of note-worthy contribution made by not-for-profit ASCI and the improvement brought about by ASCI through the ASCI Code in the field of advertisement, Government of India, Ministry of Consumer Affairs has signed an MOU with ASCI, permitting it to examine complaints that consumers directly upload on said Ministry’s portal known as Grievance against Misleading Advertisement (GAMA). ASCI examines the complaints against advertisement; keeps the said Ministry informed of its decision, where-after Government follows its own procedure for taking action against the violators. Similar arrangement exists between ASCI and Food Safety Standards Authority of India (FSSAI) and Ministry of

AYUSH. Where the ministries have also recognized and supported Suo-Moto surveillance by the ASCI.

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26. I say that neither Respondent No. 5 nor the CCC can, or does, take any steps or measures, coercive or otherwise, as defined under the said Act, against the offending advertiser. There is no delegation of the duties and functions of the Ministry of Information & Broadcasting, Government of India. The Respondent No.5 is merely a recommendatory and a Self-Regulatory body.”

6. In view of the aforesaid affidavit filed by the respondent No.5 – ASCI, it is crystal clear that ASCI is not an adjudicatory authority at all replacing the Central Government. As per aforesaid counter affidavit ASCI first send their recommendations to the Government and thereafter decision is to be taken by the Government.

7. Petitioner in person tendered a copy of Memorandum of Understanding (MoU) to this Court which is taken on record. Looking to the Memorandum of Understanding (MoU), entered into between Food, Safety and Standards Authority of India (FSSAI) – a statutory body established under the Food, Safety and Standards Act, 2006 with Advertising Standards Council of India (ASCI) as regulatory voluntary organisation, dated 28th June, 2016 Clause 4 thereof reads as under:

“4. REPORTS:

4.1 ASCI shall send a monthly report on the number of complaints processed during a particular month. The report shall be sent within 15 working days of the receipt of minutes

of the last meeting of ASCI's Consumer Complaint Council.

4.2 ASCI shall attach a certificate with the monthly report that the complaints with the monthly report that the complaints on GAMA are excluded from the number of complaints processed.

4.3 Reports of Non Compliance, non-withdrawal or non-modification/s of misleading advertisements as recommended by ASCI's CCC would be reported as and when such non-compliance/s are identified so that the FSSAI may take necessary action against such errant advertiser/FBO.

4.4 ASCI will forward the supporting documents on the basis of which the decisions were/are taken by the ASCI along with a copy of the decision with respect to misleading advertisements stated in clause 4.3 above.

4.5 Meetings between officials of FSSAI and ASCI will be held in on monthly basis or as mutually decided in Delhi and Mumbai on alternate basis to discuss the progress and other related issues in processing the complaints. ASCI shall bear expenses on local stay of their officers."

8. The scope of the MoU between the aforesaid two parties as mentioned in the Memorandum of Understanding (MoU) reads as under:

"WHEREAS the FSSAI is desirous of assigning the work of "Processing the complaints of misleading advertisements with respect to Food & Beverages (F&B) Sector" on behalf of FSSAI.

AND

WHEREAS the ASCI has accepted the work for "Processing the complaints of misleading advertisements with respect to Food & Beverages (F&B) Sector" on behalf of FSSAI."

9. In view of the aforesaid scope of the Memorandum of Understanding

(MoU), it cannot be said that there is excessive powers delegated by the Union of India to ASCI. ASCI is merely a recommendatory body. The recommendations are to be appreciated and decided by the Union of India. For ready reference Rule 7(9) of the Cable Television Networks Rules, 1994 reads as under:

“(9) No advertisement which violates the Code for self-regulation in advertising, as adopted by the Advertising Standard Council of India (ASCI), Mumbai for public exhibition in India, from time to time, shall be carried in the cable service.”

10. In view of the aforesaid facts and Memorandum of Understanding (MoU) and also looking to the counter affidavit filed by respondent No.5 and also looking to the stand taken by the respondent No.1 - Union of India, we are of the considered view that there is no excessive delegation of powers given to ASCI by the Union of India.

11. With these observations, this writ petition stands disposed of.

CM APPL.44138/2019

12. In view of the final order passed in W.P.(C) 9823/2017, the application stands disposed of as infructuous.

CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 07, 2020

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