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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NOS.34099 OF 2012 AND 45 OF 2013

AND

CONNECTED MISCELLANEOUS PETITIONS

V.Dharmalingam

... Petitioner
in both WPs'

Vs.

1.Union of India

Rep. by the Secretary to Government
Health and Family Welfare Department
Indian Red Cross Society Annex Building,
1, Red Cross Road,
New Delhi - 110 001.

2.The State of Tamil Nadu

Rep. by the Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009.

3.The Director of Drugs Control

DMS Compound, Chennai - 600 006.

4.The State of Tamil Nadu

Rep. by R.Elango, M.Pharm
Drug Inspector, Maiyaladuthurai Range,
Office of Drug Inspector
Room No.13, Salam Mansion,
27-B, Town Extn.,
Maiyaladuthurai - 609 001.

... Respondents 1 to 4
in both WPs'

PRAYER IN WP NO.34099 / 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the 4th respondent from prosecuting C.C.No.14 of 2012 on the file of Chief Judicial Magistrate, Nagapattinam.

PRAYER IN WP NO.45 / 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings of the 3rd respondent in R.Dis.No.0343/IW2/2012(242) dated 28.02.2012, quash the same.



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For Petitioner : Mr.V.Selvaraj
(in both WPs')

For Respondents : Mr.M.Rajendran
2 - 4 (in both WPs') Additional Government Pleader

R1 : No Appearance

COMMON ORDER

The petitioner is a Registered indigenous Medical Practitioner and Trustee of Dharma Medical Research and Charitable Trust. The Trust is administering the Dharma Ayurveda Medical College and Hospital and Velumailu Siddha Medical College and Hospital at Sriperumbudur. The Tamil monthly Magazine by name and style "Health Choice" was published for the purpose of propagation of Indian Medicine. "Health Choice" is registered under the Press and Registration of Books Act. The petitioner is the Editor of that Magazine. In a monthly Magazine issue of September 2011, there were publications regarding certain medicines viz., Livoral capsule, Memoral syrup, Vasaka Cough Syrup, Painil Oil, Livoral Syrup and Kasa Kasayam, manufactured by Dharma Pharmacy Private Limited. Pursuant to this, the fourth respondent issued a show cause notice dated 09.11.2011, as to why action should not be taken against the petitioner under Section 3(d) read with Sl.No.19 of the Schedule of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 punishable under Section 7(a) of the said Act. The petitioner sent a reply on 24.11.2011. The fourth respondent filed a private complaint invoking powers under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, on the file of Chief Judicial Magistrate, Nagapattinam. The case was taken on file as C.C.No.14 of 2012 and the petitioner was summoned to appear before the Court. At this juncture, the third respondent passed the impugned order dated 28.02.2012, according sanction to the fourth respondent to prosecute the petitioner for the contravention of Section 3(d) read with Serial No.19 of the Schedule of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. Questioning the same, the petitioner is before this Court.

2. According to the petitioner, the action of the third and fourth respondents is without jurisdiction. The fourth respondent is a Drug Inspector appointed under Section 21 of the Drugs and Cosmetics Act, 1940 (in short "the Act"). Chapter IV of the Drugs and Cosmetics Act deals with manufacture, sale and distribution of Drugs and Cosmetics pertaining to Allopathy medicines. For the offences of misbranded drugs, adulterated drugs, spurious drugs, misbranded cosmetics, spurious cosmetics and adulterated cosmetics, the Drug Inspector appointed under

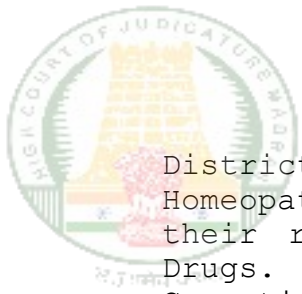


Section 21 of the Act can exercise his jurisdiction against the violators under the powers conferred under Section 22 of the Act. Insofar as Siddha, Ayurvedic and Unani medicines are concerned, Chapter IV-A of the Act has been inserted by Act 13 of 1964 with effect from 01.02.1969. As per Chapter IV-A, for misbranded drugs, adulterated drugs and spurious drugs in Ayurvedic, Siddha and Unani, a separate Technical Advisory Board has been constituted under Section 33-C of the Act and the Drug Inspectors appointed under Chapter IV-A of the Act alone are having jurisdiction to initiate action.

3.Per contra, the learned Additional Government Pleader would vehemently contend that the operation of Drugs and Cosmetics Act, 1940, operates entirely in a different field and provisions of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, specifies independent powers. As per Section 8 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, any Gazetted Officer authorised by the State Government shall have the power of entry and search of any Manufacturing Unit and take action against the offending advertisements. Insofar as Serial No.19 of the Schedule of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Fevers (in general) the Schedule prohibits any advertisements made for the purport of preventing or cure or make claims to prevent or cure. In the offending advertisements, the petitioner has advised "Kasa Kasayam" as a cure for fever which is prohibited under the Schedule of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Further, as per the Government Notification, it is not only the Drug Inspector, but also the Local Inspector or other authorities are empowered to take action for this misleading wrong advertisements. Therefore, the fourth respondent being appointed as a Drug Inspector and notified by the Government, has all powers to initiate action against the offending advertisement made by the petitioner.

4.I have given my anxious consideration to the issue in these writ petitions.

5.It is no doubt that for the offending or misleading advertisement issued by the Medical Practitioners, action is liable to be taken as per the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. But, in the instant case, whether the fourth respondent is competent and has jurisdiction to initiate action is the moot question. A perusal of the Government Order in G.O.(Ms) No.421, Health and Family Welfare (IM2(2)) Department, dated 07.11.2007 notifies that under the powers conferred by Section 33-G of the Drugs and Cosmetics Act, 1940, the Governor of Tamil Nadu appoints the



District Siddha Medical Officers of the Indian Medicine and Homeopathy Department to be Inspectors for the areas within their respective jurisdiction, for Ayurveda, Siddha and Unani Drugs. This Notification drawing powers from the Drugs and Cosmetics Act, 1940, appoints Inspectors of Ayurveda, Siddha and Unani Drugs for Indian Medicine and Homeopathy Department. Chapter IV-A of the Act, specifically dedicated to Ayurvedha, Siddha and Unani Medicines. The impugned advertisement was made for a medicine under the category of Ayurveda, Siddha and Unani. In that event, the exclusive jurisdiction is conferred with the Drug Inspector appointed under Chapter IV-A of the Act. The Government Order in G.O.(Ms) No.313, Health and Family Welfare Department, dated 23.09.2003 reveals that the fourth respondent was appointed as a Drug Inspector under Section 21 of the Act, who is empowered to deal with the Allopathy drugs only and he is not an Inspector appointed under Chapter IV-A Section 33-G of the Act. Therefore, the fourth respondent has no jurisdiction to issue such notice.

6.It is further substantiated by the brochure / information issued by the State Licensing Authority for Indian Medicine (Department of Indian Medicine and Homeopathy) Government of Tamil Nadu with regard to the Licensing Authority. As per the Notification in the official website, it is noted that the Licensing Authority of Indian Medicine performs the duty in respect of advertisements also. The Regulation of misleading Ayurveda, Siddha and Unani drugs advertisement falls under his function and he is the only person empowered to take action with regard to the misleading advertisements, cancellation and suspension of Drug Licenses for violation of respective statutes. It is further submitted that the order issued by the Government in G.O.(D) No.04, Health and Family Welfare (IM2-1) Department, dated 04.01.2016, wherein one Dr.M.Pitchai Kumar, Assistant Lecturer (Siddha) Government Siddha Medical College, Chennai, has been appointed as a Licensing Authority for the whole State of Tamil Nadu for the purpose of Part XVI of the Drugs and Cosmetics Rules, 1945. The said Government Order has been referred while describing his powers and functions exercisable as Licensing Authority of Indian Medicine.

7.It is also noted that the Government issued Notification in the Official Gazette for appointing Drug Inspectors of Indian Medicine District wise at the Office of the District Siddha Medical Officer. Therefore, it is very clear that the Inspectors of Allopathy medicine and Inspector of Ayurveda, Siddha and Unani are acting in different spheres exercising their powers with respect to the medicine of their respective fields. An Allopathy Doctor cannot be said to be an expert in Siddha or Ayurvedha Medicine. Likewise, a Siddha Doctor cannot be an expert in respect of Allopathy medicine. The advertisement



standards can be controlled only by the authorities appointed under the respective provisions of the Act. In that view of the matter, if at all an action has to be initiated, it should be initiated by the Inspectors appointed under Schedule IV-A of the Act and not by an Inspector appointed under Section 21 of the Act. In view of the same, the action initiated by the fourth respondent is absolutely without jurisdiction.

8. Accordingly, the impugned proceedings of the third respondent in R.Dis.No.0343/IW2/2012(242) dated 28.02.2012 stands set aside and W.P.No.45 of 2013 stands allowed.

9. In view of setting aside of the impugned proceedings of the third respondent in W.P.No.45 of 2013, being allowed, no orders are required to be passed in the writ petition filed in W.P.No.34099 of 2012.

10. In fine, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary to Government
Union of India
Health and Family Welfare Department
Indian Red Cross Society Annex Building,
1, Red Cross Road,
New Delhi - 110 001.

2. The Secretary to Government
Government of Tamil Nadu
Health and Family Welfare Department
Fort St. George, Chennai - 600 009.

3. The Director of Drugs Control
DMS Compound, Chennai - 600 006.

+1cc to Mr.V.Selvaraj, Advocate, S.R.No.25387

WP NOS.34099 OF 2012 AND 45 OF 2013

VBM(CO)
GN(23/05/2022)