



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-01-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.26668 of 2019

And

WMP Nos.26056 of 2019 and 2233 of 2022

H.Kanchana Hariharan

.. Petitioner

-VS-

- 1.The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Public Health and Preventive
Medicine,
DMS Campus,
Chennai-600 006.
- 3.The Director of Medical Education,
Kilpauk,
Chennai-600 010.



- 4.The Director of Drugs/Control,
Office of the Director of Drugs Control,
Teynampet,
Chennai-600 006.
- 5.The Director,
National Institute of Siddha,
Government of India,
Tambaram Sanitorium,
Chennai-600 047.
- 6.The Commissioner of Police,
Vepery,
Chennai-600 007.
- 7.The Inspector of Police (Crime),
Triplicane Police Station,
Chennai-600 005.
- 8.The Medical Officer,
Chennai Corporation,
Rippon Building,
Chennai-600 003.
- 9.The Drugs Inspector,
Triplicane Range,
Office of the Assistant Director of Drugs Control,
Zone III, DMS Campus, 259-261,
Anna Salai,
Teynampet,
Chennai-600 006.
- 10.B.Shreyans



WEB COPY

11.The Designated officer,
Tamil Nadu Food Safety and Drug Administration
Department,
(Food Safety Wing),
Office of the Designated Officer,
No.33, West Zones Road,
Saidapet,
Chennai-15.

12.The President,
Tamil Nadu Medical Council,
No.914, Poonamallee High Road,
Arumbakkam,
Chennai-106.

13.The Chairman,
(Member NITI Aayog),
Medical Council of India,
Pocket-14, Sector-B,
Dwarka Phase-1,
New Delhi-110 077.

14.The Director,
Tamil Nadu Siddha Medical Council,
Arignar Anna Government Hospital Campus,
Arumbakkam, (Near Anna Arch),
Chennai-106

[R-11 to R-14 impleaded as per order dated 06.11.2019
made in WMP No.31575 of 2019 in
WP No.26668 of 2019]

.. Respondents



WEB COPY

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Mandamus, to direct the respondents 1 to 9 to take appropriate action against the tenth respondent for selling the unlicensed medicines.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents-1 to 4, 6, 7,
9, 11 and 14 : Mr.G.Ameedius,
Government Advocate.

For Respondent-10 : Mr.S.M.Muralidharan

For Respondent-12 : Mr.G.Sankaran,
Senior Counsel.

For Respondent-5,8 and13 : Not Ready in Notice

ORDER

The Writ of Mandamus has been instituted to direct the respondents 1 to 9 to take appropriate action against the tenth respondent for selling unlicensed medicines to the petitioner.



2. The learned counsel for the petitioner Mr.S.Ilamvaludhi would state that the petitioner purchased the Shampoo called 'Swadeshi Herbal Shampoo' on 21.11.2018 at 'Swadeshi Mandir', No.61, Wallajah Road, Anna Salai, Chennai-600 002 and the shop owner compelled the petitioner to purchase another medicines called 'Aloevera Extract', 'Amla Powder', 'Sarvarog Nashak Churna', 'Vibhuti (Bhasm)' and 'Triphala Powder'.

3. The learned counsel for the petitioner would further state that after using the said Shampoo viz., Swadeshi Herbal Shampoo, the petitioner found that she suffered with hair fall and the advertisement made by the tenth respondent regarding the said powder viz., 'Sarvarog Nashak Churna' are completely misleading and false. Such advertisements given by the manufacturers or the retailers for selling such products misleading the public at large would attract the provisions under Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 [hereinafter referred to as the 'Act', in short]. Any false or misleading advertisements of drugs or other products are made, then the Authorities Competent are bound to invoke the provisions of the Act and prosecute the persons in the manner



contemplated.

4. In the present case, the grievance of the petitioner is that the complaint given by her was not investigated properly by the authorities. Thus the petitioner is constrained to move the present writ petition.

5. Pertinently, the official respondents have not filed any counter-affidavit in the present writ petition, despite the fact that the present writ petition is pending for the past about four years. The inaction and omission on the part of the official respondents in dealing with such serious matters are to be deprecated. The Drugs Inspector, Triplicane one Smt.S.Dhanalakshmi, W/o.Mr.C.Seenivasan filed a Report before this Court in the present writ petition stating that the product 'Sarvarog Nashak Churna' as stated by the petitioner that the label of the product claims to cure certain diseases, which will attract Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. After inspection of the premises of the tenth respondent and on enquiry, the tenth respondent stated that the said product is a food supplement and he is holding a food license to manufacture the product.



6. The Drugs Inspector merely accepting the statement of the tenth respondent is unacceptable and the Drugs Inspector was very much knowing about the advertisements given by the tenth respondent visibly on the product and in the label. In such circumstances, the Drugs Inspector with reference to the advertisements has to take samples and sent it for laboratory test, identify the character and nature of the products and if any illegality or wrongful information is provided, then prosecute the persons under the relevant Statutes.

7. The Report submitted by Smt.S.Dhanalakshmi, the Drugs Inspector would indicate that she had failed to perform her duties as required under law. Therefore, the Director of Drugs Control has to conduct an enquiry and initiate appropriate actions against the said Drugs Inspector, namely, Smt.S.Dhanalakshmi, if she had failed to do her duties in initiating appropriate actions against such misleading advertisements or lapses, negligence or dereliction of duty.



8. In view of the facts and circumstances, this Court has no other option, but to direct the respondents 1 to 9 to depute an Officer not below the rank of Assistant Director of Drugs Control to conduct an inspection in the tenth respondent shop premises, test the products and the advertisements given and initiate all appropriate actions in the manner known to law if any illegalities are identified. The said enquiry or action to be initiated by the Authorities are directed to be monitored by the fourth respondent-Director of Drugs Control. The abovesaid exercise is directed to be completed by the respondents 1 to 9, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, the present writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

12-01-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
2. The Director of Public Health and Preventive
Medicine,
DMS Campus,
Chennai-600 006.
3. The Director of Medical Education,
Kilpauk,
Chennai-600 010.
4. The Director of Drugs/Control,
Office of the Director of Drugs Control,
Teynampet,
Chennai-600 006.
5. The Director,
National Institute of Siddha,
Government of India,
Tambaram Sanatorium,
Chennai-600 047.
6. The Commissioner of Police,
Vepery,
Chennai-600 007.
7. The Inspector of Police (Crime),
Triplicane Police Station,
Chennai-600 005.



8. The Medical Officer,
Chennai Corporation,
Rippon Building,
Chennai-600 003.

9. The Drugs Inspector,
Triplicane Range,
Office of the Assistant Director of Drugs Control,
Zone III, DMS Campus, 259-261,
Anna Salai,
Teynampet,
Chennai-600 006.

10. The Designated officer,
Tamil Nadu Food Safety and Drug Administration
Department,
(Food Safety Wing),
Office of the Designated Officer,
No.33, West Zones Road,
Saidapet,
Chennai-15.

11. The President,
Tamil Nadu Medical Council,
No.914, Poonamallee High Road,
Arumbakkam,
Chennai-106.

12. The Chairman,
(Member NITI Aayog),
Medical Council of India,
Pocket-14, Sector-B,
Dwarka Phase-1,
New Delhi-110 077.



WP No.26668 of 2



13. The Director,
Tamil Nadu Siddha Medical Council,
Arignar Anna Government Hospital Campus,
Arumbakkam, (Near Anna Arch),
Chennai-106.



WEB COPY

WP No.26668 of 2



S.M.SUBRAMANIAM, J.

Svn

WP 26668 of 2019

12-01-2024