

In Re: Smt. Bharti Devi

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Court : Monopolies and Restrictive Trade Practices Commission MRTPC

Decided On : Nov-18-1986

Reported in : (1987)61CompCas734NULL

Judge : G Luthra, S Manchanda

Appellant : In Re: Smt. Bharti Devi

Judgement :

1. This enquiry has been instituted under Section 36B(d) of the Monopolies and Restrictive Trade Practices Act, 1969, on the basis of the findings given in the preliminary investigation report submitted by the Director (Research) in compliance with this Commission's order under regulation 35(1) of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974.
2. It is alleged in the notice of enquiry that the advertisement issued by the respondent in Dainik Vishwamitra, dated October 9, 1985, announcing the sale of goods at throwaway prices, is an unfair trade practice as denned in Sub-section (2) of Section 36A of the Monopolies and Restrictive Trade Practices Act.
3. The notice of enquiry was received back with the remarks that the respondent is not residing at either of the two addresses to which notice was sent by Registered A.D. The Commission was satisfied that it was not possible to serve the notice on the respondent in any other manner except under Order 5, Rule XX, Civil Procedure Code. On the orders of the Commission, the notice was accordingly served by way of publication in Amrit Bazar Patrika of Calcutta dated July 16,

1986.

This particular newspaper was selected because it was being published from Calcutta where the respondent, according to the addresses given in the advertisement, carried out the particular sale announced in the impugned advertisement.

4. As this notice also remained uncomplied with, the proceedings against the respondent were set ex parte. The Director-General (I & R) filed affidavit by way of ex parte evidence on November 4, 1986, on which date the Director-General's arguments were also heard.

5. In his affidavit, the Director-General has solemnly affirmed that the respondent had issued the impugned advertisement announcing sale of goods at throwaway prices without mentioning the quality of goods and the period for which the sale was to be continued. According to the impugned advertisement, the respondent offered for sale, saris, bedsheets and readymade garments, etc., having normal market price ranging between Rs. 35 to Rs. 285 at rates ranging between Rs. 5 to Rs. 65 only. The affidavit further narrates the attempts made by the investigating officer appointed by the Commission to contact the respondent and verify the genuineness of the throwaway prices. The respondent was not found at the two addresses which she gave to the newspaper in which the impugned advertisement appeared, namely, Dainik Vishwamitra and the advertiser concerned, namely, M/s. Print Art. In these circumstances, the Joint Director (Economics) in her preliminary investigation report came to the following conclusion : "That the advertisement attracts provisions of Section 36A of the Monopolies and Restrictive Trade Practices Act is beyond question.

The advertisement makes no mention of the quality of goods. In its absence, market price is meaningless. Also textiles are such heterogeneous items that there is no fixed market price for any item. Under such circumstances, quoting a fictitious market price amounts to misleading the public concerning the price at which these products are ordinarily sold. Section 36A(1) and (2) is violated.

The advertisement also makes no mention of the period of sale. So it is not possible to judge if the sale has been held for a period that is reasonable. Withholding this information from the public would cause consumer injury or loss because the consumers might visit the venue and find that the sale is yet to start/over/or for one day which is an unreasonable period having regard to the amount of goods put up for sale. " 6. We have gone through the impugned advertisement, the preliminary investigation submitted by the Joint Director (Economics) and the affidavit of the Director-General and we are satisfied that the respondent has indulged in the unfair trade practice within the meaning of Sub-section (2) of Section 36A of the Monopolies and Restrictive Trade Practices Act by advertising sale at throwaway prices giving unverifiable market prices without mentioning the quality of goods offered for sale and the duration of the sale period. We are also satisfied that the aforesaid unfair trade practice is prejudicial to the public interest. There is nothing to indicate that the respondent has continued with the unfair trade practice and, therefore, the only order that we pass under Section 36D(1) of the Monopolies and Restrictive Trade Practices Act is that the respondent shall not repeat the aforesaid unfair trade practice.

8. It is directed that a gist of this order be published in the same newspaper in which the impugned advertisement was inserted.

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