

Sameer Jain & Another vs Union of India & Others

COURT: Delhi High Court

CITATION: W.P.(C), 9823 of 2017

DECIDED ON: 07.02.2020

BENCH: HON'BLE MR. JUSTICE C. HARI SHANKAR

LAW APPLIED: [Drugs and Cosmetics Act, 1940](#), [Rule No.7\(a\) of Cable Television Networks Rules enacted under Cable Television Networks Act, 1995](#), [Rule 7\(9\) of the Cable Television Networks Rules, 1994](#)

FACTS OF THE CASE:

1. This case was related to a public interest litigation (PIL) filed by the petitioner in the Delhi High Court.
2. Advertising standard council of India (hereinafter referred to as ASCI) is a private body which works in association with the Government of India on several fronts.
3. ASCI examine complaints on behalf of several authorities and sends report to such authorities.
4. A memorandum of understanding (MOU) came into light between Food, Safety and Standards and Authority of India or FSSAI and ASCI.
5. That particular Memorandum of understanding had a clause regarding the reports that need to be sent by ASCI to the FSSAI.
6. The extent of the MoU between the aforementioned two sides as referenced in the Memorandum of Understanding (MoU) peruses as under:

->Wherever the FSSAI is allocating work by "Handling the objections of misdirecting commercials regarding Food and Beverages (F&B) Sector" in the interest of FSSAI.

->What's more, WHEREAS the ASCI has acknowledged the work for "Handling the objections of deluding commercials as for Food and Beverages (F&B) Sector" for the benefit of FSSAI.

7. The petitioner alleged that there has been an excessive delegation of power by the Government of India to the ASCI.

8. While the defendant maintained that ASCI is merely an advisory body and has no actual powers to punish anyone.

ABOUT ASCI:

The Advertising Standards Council of India (ASCI), set up in 1985, is focused on the reason for Self-Regulation in Advertising, guaranteeing the assurance of the interests of purchasers. ASCI was framed with the help of each of the four areas associated with Advertising - Advertisers, Advertising Agencies, Media (counting Broadcasters and the Press), and others like PR Agencies and Market Research Companies.

- The Consumer Complaints Council (CCC) is ASCI's vital part. It is the committed work placed in by this gathering of prominent individuals that have given a colossal impulse to ASCI's work and self-regulation in promoting.

- ASCI's objectives incorporate checking, overseeing, and advancing guidelines of ad campaigns rehearses in India with a view to:
 - Guaranteeing honesty and genuineness of portrayals and cases made through promoting and protecting against misdirecting adverts.

- Guaranteeing that advertising isn't hostile to by and large acknowledged standards and norms of public conventionality.
- Shielding against aimless utilization of promoting items or administrations which are viewed as risky to society or to people or which are unsatisfactory to society all in all.
- Guaranteeing that there is reasonableness in rivalry and the groups of commonly acknowledged competition related conduct.
- To systematize receive and every now and then change the code of adverting habits in India and execute, control, advance and advertise such a code.
- To advance, keep up, and maintain reasonable, sound, moral, and solid standards and practices of ad promotions.
- To advance a superior comprehension of the advantages of reasonable, sound, and moral promoting among the specialists of ad campaigns and in the public arena on the loose.
- To address, ensure, advise and guide individuals from the organization on issues identifying with these ad promotions.
- To encourage and advance participation among people or organizations drew in and associated with ad campaigns.

ABOUT FSSAI:

The Food Safety and Standards Authority of India (FSSAI) has been set up under Food Safety and Standards, 2006 which combines different acts and orders that have until now dealt with food-related issues in different Ministries and Departments. FSSAI has been made for setting down science-based guidelines for articles of food and to manage their production, stockpiling, conveyance, deal, and import to guarantee the accessibility of protected and healthy nourishment for human utilization.

Features of the Food Safety and Standard Act, 2006

- Different Acts of the centre like Prevention of Food Adulteration Act, 1954, Fruit Products Order, 1955, Meat Food Products Order, 1973,
- Vegetable Oil Products (Control) Order, 1947, Edible Oils Packaging (Regulation) Order 1988, Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order, 1967, Milk and Milk Products Order, 1992, and so on will be cancelled after beginning of FSS Act, 2006.
- The Act additionally plans to build up a solitary reference point for all issue identifying with food handling and principles, by moving from staggered, multi-departmental control to a solitary line of order. With this impact, the Act sets up a free legal Authority – the Food Safety and Standards Authority of India with head office at Delhi. Food handling and Standards Authority of India (FSSAI) and the State Food Safety Authorities will authorize different arrangements of the Act.

Foundation of the Authority

- Service of Health and Family Welfare, Government of India is the Administrative Ministry for the execution of FSSAI. The Chairperson and Chief Executive Officer of the Food Safety and Standards Authority of India (FSSAI) have effectively been delegated by the Government of India. The Chairperson is in the position of Secretary to Government of India.

- FSSAI has been commanded by the FSS Act, 2006 for playing out the accompanying capacities:
- Outlining of Regulations to set out the Standards and rules comparable to articles of food and indicating suitable arrangement of implementing different guidelines subsequently told.
- Setting down components and rules for accreditation of certificate bodies occupied with confirmation of food handling the board framework for food organizations.
- Setting down strategies and rules for accreditation of labs and notice of the licensed research facilities.
- To give logical counsel and specialized help to Central Government and State Governments in the issues of outlining the approach and decides in regions that have an immediate or circuitous bearing on food handling and nourishment.
- Gather and group information in regards to food utilization, rate and predominance of natural danger, foreign substances in food, deposits of different, pollutants in food varieties items, distinguishing proof of arising dangers, and presentation of the fast ready framework.
- Making a data network the nation over with the goal that people in general, buyers, Panchayats, and so on getting quick, dependable, and target data about food handling and issues of concern.
- Give preparing projects to people who are included or mean to engage in food organizations.
- Add to the advancement of worldwide specialized principles for food, sterile and phytosanitary guidelines.
- Advance general mindfulness about food handling and food principles.

ISSUE IN THE CASE:

Whether there has been an excessive delegation of power by the Government of India to the ASCI.

RELEVANT LAWS:

- Drugs and Cosmetics Act, 1940.
- Rule No.7(a) of Cable Television Networks Rules enacted under Cable Television Networks Act, 1995.
- Rule 7(9) of the Cable Television Networks Rules, 1994.

“9) No advert which abuses the Code for self-guideline in promoting, as received by the Advertising Standard Council of India (ASCI), Mumbai for the public show in India, occasionally, will be conveyed in the link administration.”

ANALYSIS:

If we look at this particular case then we'll find that the petitioner failed to prove his claims, he claimed that the ASCI was delegated powers by the FSSAI that should not be allowed as ASCI is merely a private body, but if we look at the functions of the ASCI it is merely advisory in nature and it doesn't really have any powers to take action against wrongdoers, it only provides a prudent advice to the authority based on which it (the authority) decides whether to take action or not. Now this cannot be termed as an excessive delegation of power and there is a proper Memorandum of Understanding between the government body and the private body. However, if the plaintiff somehow proved that all of the decisions were no matter how questionable or vile were approved by the FSSAI and there was no application of mind on the part of this authority with supporting evidences then the plaintiff could have put forward a strong case and let's say even could have possibly got at least some success against the Government authority.

CONCLUSION:

In an effective conclusion while we can say that the court was justified in dismissing the petition but on the same hand, we can also count the petitioner to be lucky in the sense that he made a petition in court in order to gain attention and regard from the hoi polloi, without any

proper research on the background of the matter, as there were no understandable grounds of the petition as it seemed like he had not really researched the functions of the ASCI and still he was not reprimanded harshly from the court. He had assumed that ASCI go on a blatant use of punishments on behalf of FSSAI and take action on entities that have done misdirecting advertising when that was clearly not the case. All ASCI did was advise FSSAI in deciding who all were the culprits and yet the final discretion was with the said authority. In fact, the petitioner was lucky enough not to be fined or being imposed with costs by the Hon'ble High Court in my opinion.

REFERENCES:

1. <https://www.ibfindia.com/advertising-standards-council-india-asci>
2. <https://fssai.gov.in/cms/about-fssai.php>
3. <https://indiankanoon.org/doc/161206175/>
4. <https://www.indianemployees.com/judgments/details/sameer-jain-anr-versus-union-of-india-ors>

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