

DIRECTOR-GENERAL OF INVESTIGATION AND REGISTRATION V. MRS. KAMLESH THAPER

[I.A. No. 27 of 1988 in U.T.P.E. No. 118 of 1988]

FACTS:

An application was filed by Director-General of investigation and registration under section 12A of the Monopolies and Restrictive Trade Practices Act, 1969 thus, Power of the Commission to grant temporary injunctions along with an application under section 36B (c) of the Monopolies and Restrictive Trade Practices Act thus, unfair trade practices.

In this the respondent put an advertisement in the Hindustan Times on Feb 3, in the advertisement it was mentioned – HEALTHY Boy or Girl, know the sex of the unborn child by amniocentesis of 16 weeks of pregnancy or by CVS Study of 8-12 weeks with the aid of ultrasound scanning and Artificial Insemination also thus, the Director-General find out unfair trade practices.

ISSUES:

The Director- General of Investigation and Registration file an application issuing of an interim injunction under section 12A of the Monopolies and Restrictive Trade Practices Act, 1969 along with the application under section 36B (c) under the same Act.

The Respondent begin an institute in the name of M/s Agya's Infertility and Genetic Institute, at B-2, Moti-Nagar, New Delhi, in Jan 1988.

An advertisement was made by her in the Hindustan Times then the Director-General started investing and then it was found out that she was carrying out unfair trade practices.

Then the Director-General wrote a letter to find out who were the doctors controlling this institute and getting more information on Feb 11, 1988. And it was answer by the respondent that the doctors were on call-basis and whenever there would be case, any doctor who was accessible used to be called. Thus, thought that she was unable to take the name of any doctors who was working with the institute for this. And also found out that she herself in not medically capable for the work hence, the statement given in the advertisement is false.

And even the letter consists of other questions about what are the methods used to determine the sex of the unborn child? She replied a photostat machine copier of which is addendum to the application under section 36B(C) of the Monopolies and Restrictive Trade Practices Act thus the way was mentioned in the advertisement thus, she ignored the above question clearly and also mentioned in the reply letter saying she not at all had any facility accessible in her institute in respect of taking the test thus, she don't have any medical evidence and also don't have any facilities for anything carrying out mentioned in the advertisement.

The charges were also mentioned by the respondent in the letter that amniocentesis for Rs. 1,000, CVS for Rs. 2,000 and Rs. 50 for Artificial Insemination which are quite reasonable.

RULE:

Thus, unfair trade practices under section 36 (1)(ii), (iv) and (vi) of the Monopolies and Restrictive Trade Practices Act.

Clause (ii) put in because there is a wrong representation about the medical services as regard to the detention of sex of an unborn child.

Clause (iv) of sub-section (1) of section 36A put in because according to her claims everything she mentioned her institute, her facilities her medical services were indeed imaginary thus non-existence.

Clause (vi) put in because there is wrong or false thus deceptive advertisement in respect of the usefulness mentioned in the advertisement.

ANALYSIS:

In her reply to the letter, she mentioned the institute was originally planned as a coordinating and collection centre. On the other hand, the claim was worthwhile that the institute solely is competent of detention of the sex of an unborn child. It was issued by the Director-General was significant in respect of the interest of the general public. But it was true that the institute was closed by the respondent but Director-General said it may be started again. It was necessary as people can be fooled and there can be depriving of their good money of some people.

And also, the charges were mentioned by the respondent in reply to the letter send by the Director-general.

So, the respondent was carrying out an unfair trade practices in respect of making false and misleading statement in the advertisement whether in the media or otherwise as are detailed in this order and also under section 12A and 36B (c) of the Monopolies and Restrictive Trade Practices Act.

Thus, a notice of the application was sent to the respondent showing cause on April 7, 1988 stating the unfair trade not to be continued till the decision of the inquiry along with this a copy of application under section 36B (c) plus section 12A of the Monopolies and Restrictive Trade Practices Act shall be sent to respondent.

CONCLUSION:

Section 12 A (2) of the Monopolies and Restrictive Trade Practices Act, 1969 permit the petitioner that is the Director-General to issue a notice of intimation of an injunction.

Section 36 B (c) permits the petitioner to dispatch a reprint of the principal application. The petitioner may issue a copy of all the annexures and affidavit.

In this case, it was assembled direct that no details or information present in either of the notices or the issues may prejudice the closing decision whatsoever provided under Section 12 A of the Monopolies and Restrictive Trade Practices Act, 1969.