

THE HAMDARD DAWAKHANNA AND ANOTHER V. UNION OF INDIA AND OTHERS

(High Court Of Punjab And Haryana)

[SCR 1960 (2) 671]

Civil Writ Petition No. 258-D of 1957 | 13-01-1964

FACTS

The two appellants, Hamdarad Dawakhana (Waqf), Delhi and Mutawalli Haji Hakim Hameed, represented the Hamdard Dawakhana center which was originally founded in or around 1906 as Dawakhana and was later declared and established as Waqf. Since its inception, the center has been operating clinics and clinical trials for patients and has been producing and supplying medicines and medical products according to Ayurvedic and Unani Systems of Medicines. Appellant 1 also forms synthetic syrups that contain fruit juices for medicinal purposes and are prepared in a specific way.

Applicants for Writ Petition No. 81 of 1959, Hamdard Dawakhana (wakf) and another, said that soon after the Act came into effect they had difficulty in being informed of their products and various complaints were raised by the authorities in this regard. in their advertisements. On December 4, 1958 Drugs Controller, Delhi informed applicants that the provisions of S. 3 of the Act was opposed by them and asked them to remember their products shipped to Bombay and other American states. As a result, communication between the appellants and the authorities followed. On December 4, 1958, Drugs Controller, Delhi State, suspended the sale of 40 of their products. The objection was then taken by the Drug Controller in advertisements in relation to other drugs. Similarly the objections were taken by the Drugs Administration of other provinces in various advertisements regarding drugs and drugs prepared for the petitioners. They claimed that various advertisements opposed to the Unani program and drugs had the name Unani, which was revered throughout the world centuries earlier. The Act is being targeted for discrimination under art. 14, excessive transfer and violation of the right to free speech under art. 19 (1) (a) their right to conduct business and business under art. 19 (1) (f) and (g). Opposition is also taken under art. 21 and 31. The plaintiffs therefore prayed for the proclamation that this Act and the laws enacted under it were the main and non-existent measures such as violating Part III of the Constitution and the issuance of the mandamus and Prohibition Act and the termination of proceedings and notices issued by various authorities - respondents.

ISSUES

The Drug and Magic Remedies (Objectionable Advertisements) Act, 1954, was enacted, in terms of its introduction, to regulate drug advertising in certain cases, prohibition of advertisements

relating to potentially magical remedies and to provide other matters connected thereto. The title of the law also indicates that it is directed at unpopular advertisements.

The constitutional legitimacy of the above Act was challenged by Hamdard Dawakhana V. UOI for the following reasons-

- Advertising is a vehicle that uses art that is guaranteed by art. 19 (1) (a) applies and the restrictions imposed by the Act are not covered by Art. 19 (2)
- The Act and the Rules under which it is made impose irrevocable limitations and exceed the rights of the applicant under art. 19 (1) (f) and (g).
- The power of legislation passed / less than 3 is not regulated and is not legally binding
- The power to deprive 8 persons of the Act violates the rights under the Act. 21 and 31

Complaints under Art. 32 of the Constitution raises the question in accordance with the Constitution on Drugs and Magic Ways (Doubtful Advertisements) (Act XXI of 1954) called the Act. As appeals raise a common legal question they may be dismissed for a single decision.

REASONING

The purpose of this Act as set out in the provisions of the Act and as stated in the affidavit of Mr. Merchant blocking self-medication and preventing those ads is a way to achieve that. It was argued that the preamble of the Act does not reflect anything like preventing the treatment of diseases other than those of a medical professional trained in the English Venereal Diseases Act. 1917. In this case in most cases it was permissible to provide affidavits to show the reasons for the law, the circumstances in which you became pregnant and the malpractice you were supposed to treat. This was done in the case of 1959 SCR 279: (AIR 1958 SC 538). The same goes for Kathi Raning v. State of Saurashtra, 1952 SCR 435: (AIR 1952 SC 123) and Kavalappara Kottarathil Kochunni v. The State of Madras, AIR 1959 SC 725, affidavits were filed explaining in detail the circumstances that led to the transfer of appropriate legislation.

ARGUMENTS OF PETITIONER

Allegations are that they are demanding various actions by respondents who violate their fundamental rights under art. 19 (1) (a) and art. 19 (1) (f) and (g). They also challenged the Act because it violates the provisions of the Art. 14 and art. 21 and 31.

ARGUMENTS OF THE RESPONDENT

In their affidavit the respondents indicated that the method and manner of drug advertising by complainants and others clearly demonstrates the need for a law similar to the Criticized Act and its strict enforcement. Allegations of discrimination and violation of fundamental rights under Art. 19 (1) (a), (f) and (g) and any artistic violations. 21 and 31 were rejected saying: -

"This limit is in the form of an advertisement for the general public. I would say that the main purpose of this Act is to prevent people from making their own treatment for a variety of diseases. of advertising has been thoroughly tested and the manufacturers are forced to submit their products to reputable sources so that the products of these manufacturers are approved and appropriate testing and consideration by professional agencies ".

DECISION

“We declare part of cl. (d) of Section 3 shown above and S. 8 unconstitutional and therefore direct that the mandamus letter will issue ordering respondents to return the confiscated property. As applicants argue that the law is constitutional, it is partially effective in the right way in terms of costs for parties to cover their own costs. ”

The Supreme Court has immediately set aside the following recommendations regarding the constitutional judgment under section III of the Constitution-

- It is necessary to find out the nature and true character of the Law, which means' its subject, the place by which which is intended to function, and is intended and intended. To do this it is permissible to look at all things such as the history of the law, its purpose and circumstances, the evils intended to oppress, the cure for the disease the legislature decided to treat and the real reason for the remedy.
- Affidavits may be submitted to show the reasons for the law, the circumstances in which it was suspended and the seriousness of the treatment.
- It must be borne in mind that the Legislature understands and values the need of the people and that the laws that make it refer to the problems that are experienced by experience and that the elected representatives of the Legislature make laws that they consider appropriate for their intended purpose. Thinking, therefore, supports constitutional compliance.
- To support constitutional reasoning the court may consider matters of common knowledge, chronology and may take into account all possible facts that may be considered to exist in the course of the law.

Going to the history of the Court Act it has been found that “it cannot be said that the purpose of this Act was to limit the conduct of advertisements that were morally or morally degrading but to be truly understandable and appropriate to protect oneself. or antidepressant treatment that can be used to distribute the same or often to spread the disease. ”The Court held that the advertisement was undoubtedly a statement but that its true character was reflected in the material being developed. Commercial advertising with commercial and commercial elements does not enter into the idea of free speech of its object not the distribution of ideas - social, political, or economic - or the pursuit of literature or human thought, but is part of business and cannot be linked to the essential concept of free speech. In the immediate case, an advertisement praising

the effectiveness and value of certain drugs and drugs is held to fall under art.19 (1) (g) and not within art.19 (1) (a). The Court refused to present an advertisement praising drugs and drugs as an appropriate remedy for certain diseases such as the exercise of the right to freedom of expression. The restrictions imposed by this Act are therefore construed to be for the general public and appropriate, taking into account the purpose of the Act.

The case is *sue generis* so far as the question of the type of ads relates to a question that has never been seen before in any Supreme Court or Supreme Court case. The view adopted by the Court on this question, politely suggested, seems reasonable with an advertisement intended to promote the sale of goods should be regarded as promoting trade and commerce and should therefore be subject to Art.19 (1) (g). as the Supreme Court itself states, an advertisement for the distribution of social, political, economic or literary ideas is likely to be considered under the Act. 19 (1) (a) or 19 (1) (g).

From the above, it will be seen that this case makes an important judgment, without clarifying the nature of advertisements that look at fundamental rights, is one of the few cases in which the powers of legislation passed by parliament.