Tata Press Limited vs Mahanagar Telephone-Nigam Limited & ... on 3 August, 1995

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Author: Kuldip Singh

Bench: Kuldip Singh, B.L Hansaria, S.B Majmudar

PETITIONER:
TATA PRESS LIMITED

Vs.

RESPONDENT:
MAHANAGAR TELEPHONE-NIGAM LIMITED & ORS.

DATE OF JUDGMENT03/08/1995

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 AIR 2438 1995 SCC (5) 139
JT 1995 (5) 647 1995 SCALE (4)595

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Kuldip Singh,J.

This appeal has arisen from a civil suit instituted before the Bombay by the Mahanagar Telephone Nigam Limited (the Nigam) and the Union of India for a declaration that they alone have the right to print/publish the list of telephone subscribers and that the same cannot be printed or published by any other person without express permission of the Nigam/Union of India. A further declaration was sought that the Tata Press Limited (Tatas) have no right whatsoever to print, publish and circulate the compilation called "Tata Press Yellow Pages" (Tata- pages). A permanent injunction restraining the Tatas, their agents and servants from printing and/or publishing and/or circulating the "Tata - Pages" being violative of the Indian Telegraph Act, 1885 (the Act) and the Indian Telegraph Rules, 1951 (the rules) - was also sought from the Court. The City Civil Court, Bombay by its judgment dated August 7, 1993 dismissed the suit. First appeal filed by the Nigam and the Union of India was heard by a learned single judge of the Bombay High Court and the learned judge by the judgment dated April 27, 1994 allowed the appeal, set aside the judgment of the trial court and decreed the suit. Letters Patent Appeal filed by the Tatas was dismissed by a Division Bench of the Bombay High Court by the impugned judgment dated September 8, 1994. This appeal, by way of special leave, is against the judgment of the Division Bench of the High Court upholding the learned single judge.

The Nigam is a Government company substantially controlled by the Government of India. The Government holds 80% of the total shares of the company. The Nigam is a licensee under the Act and as such is required to establish, maintain and control the telecommunication services within the territorial jurisdiction of the Union Territory of Delhi and the areas covered by the Municipal Corporations of Bombay, New Bombay and the Thane. Till 1987 the Nigam/Union of India used to publish and distribute, on its own, the telephone directory consisting of white pages only. However, of late, the Nigam started entrusting the publication of its telephone-directory to outside contractors. From 1987 onwards, the Nigam has permitted such contractors to raise revenue for themselves. by procuring advertisements and publishing the same as "Yellow Pages" appended to the telephone directory. In other words, the telephone directory published and distributed by the Nigam consists of the white pages which contain alphabetical list of telephone subscribers and also "Yellow Pages" consisting of advertisements procured by the contractor to meet the expenses incurred by the contractor in printing, publishing and distributing the directory.

The Tatas are engaged in the publication of the Tata - pages which is a buyers-guide comprising of a compilation of advertisements given by businessmen, traders and professionals duly classified according to their trade, business or profession. It is not disputed that the said compilation includes unpaid advertisements in which the category/type of business, trade or profession of the advertiser is listed. It is stated by the appellant that the advertisements are published in the Tata - pages on the application of the party concerned. The only criterion for inclusion of advertisements in the said compilation is that the advertiser must be engaged in a trade, profession or business. Three editions of Tata - Pages have already been published in Bombay in 1992, 1993 and 1994. According to the appellant such Yellow Pages/buyers guides have been published in India since 1984 and follow generic international pattern which was introduced in the USA as far back as 1880. Since 1984 a large number of parties - details have been placed on the record - are engaged in the publication of Yellow Pages/ trade directories/ buyers guides in India.

Rules 452, 453, 457, 458 & 459 of the Rules which are relevant, are reproduced hereunder:-

> "452. Supply of telephone directories. A copy of the telephonedirectory shall be supplied free of charge for each telephone, extension or party line, rented by the subscriber from an exchange system or private branch exchange or a private branch exchange or a private exchange. A copy shall also be supplied free of charge for each extension (including extension) from an extension working from a public call office. Additional copies supplied shall be charged for at such rate as may be fixed by the Telegraph Authority from time to time.
>
> 453. Entries in telephone directories. - For each direct telephone line rented (i.e. for main connections, direct extensions and PBX junction lines) ordinarily only one entry not exceeding one line will be allowed free of charge in the telephone directory to every subscriber. Such entry shall contain the telephone number, the initials, the surname and the address of the subscriber or user. No word which can intelligibly be abbreviated shall be allowed to be printed in full.
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> Additional lines may be allowed by the Telegraph Authority at its discretion.
>
> 457. General. - Any telephone directory provided by the Department shall remain its exclusive property and shall be delivered to it on demand. The department reserves the right to amend or delete any entries in the telephone directory at any time and undertakes no responsibility for any omission; and it shall not entertain any claim or compensation on account of any entry in or omission from the telephone directory or of any error therein.
>
> 458. Publishing of telephone directory. Except with the permission of the Telegraph Authority no person shall publish any list of telephone subscribers.
>
> 459. Advertisements. The Telegraph Authority may publish or allow the publication of advertisements in the body of the telephone directory."

As stated above, the learned trial judge dismissed the suit filed by the Nigam and the Union of India. The learned judge compared the advertisements published in the Tata- Pages with the Telephone directory and found as a fact that the `Tata-Pages' was a compilation of advertisements given by the businessmen, traders and professionals and as such did not constitute a list of telephone subscribers as contemplated in Rule 458 of the Rules. The learned judge based his conclusions on the reasoning that the source for the advertisements published in the Tata-Pages was different from the telephone directory, some advertisements in the Tata-Pages did not list telephone numbers, the criterion for listing in the telephone directory and for publication in the Tata-Pages was different for telephone directory the person/party must be a telephone subscriber whereas for the Tata-Pages the advertiser must be a trader, professional or businessmen - and the telephone directory was restricted to the area of service by the Nigam wheras the advertisements in the Tata-Pages relate to parties outside the local area/Bombay.

Appeal against the Trial Court judgment was heard by a learned Single Judge of the High Court. The Learned Judge agreed with the Trial Court that the white pages of the Telephone Directory constituted the `List of Telephone Subscribers' whereas the yellow pages consisted of the advertisements given by the telephone subscribers and others. He further accepted that the criterion for listing of entries in the white pages was different from the criterion for inclusion of advertisements in the yellow pages. The learned judge, however, held that Rule 458 covered all parts of the telephone directory including the yellow pages. According to the learned judge the publication of advertisements in the form of yellow pages, appended to the white pages, was within the bar contained in Rule 458 of the Rules. The learned judge accordingly allowed the appeal and restrained the appellant from publishing the Tata-Pages.

The Letters Patent Bench of the Bombay High Court hearing the appeal filed by the TATAs against the judgment of the learned single judge posed the question to be considered by the Bench in the following words:-

> "There should be no doubt that a publication in order to amount to a contravention of the Rules, as quoted above, must in substance be a "list of telephone subscribers", for it is the substance that must count and must outweigh and take precedence over mere appearance. Before restraining the defendant Tata Press Ltd. from publishing or circulating or in any way dealing with the "TATA Press Yellow Pages", we have to be satisfied that in substance and in effect the same is a "list of telephone subscribers" or a "telephone directory". The case at hand involves questions, not so much of law but rather of semantics and common sense."

The Bench while dealing with the question observed as under:-

> "a list of telephone subscribers"

would obviously mean a list of persons to whom telephone services have been provided by means of an installation under the Telegraph Rules or under an agreement. Suppose we, in this High Court, print or publish a Book containing a list of our judges and officers containing their names.

designations, departments they are attached to, their office as well as residential addresses and also their telephone numbers in the office as well as in their residence. Or, suppose, a Bar Association or a Medical Association prints or publishes a Book containing the names of their members, their specialisation, addresses of their offices, chambers and residences along with their respective telephone numbers, we are inclined to think that such Books as aforesaid may not amount to "a list of subscribers" if the dominant purpose for such publication is not to notify the telephone numbers only, but mainly to notify who these persons are along with their designations and/or qualifications or specialisation; and addresses at which they would be available during as well as after office hours and the telephone numbers published in such Books would be there only to provide a full or an more complete picture. The High Court or the Bar Association or the Medical Association in such cases may not be proceeded against for violation of Rule 458 of the Indian Telegraph Rules, for publishing such books, if the primary object thereof is not to provide the telephone numbers also along with

various other relevant matters. If in such books as aforesaid, the names of such officers or members, who are not subscribers of telephones, are also published, the same would further go to show that such books would be not be a list of subscribers."

The Bench finally upheld the judgment of the learned Single Judge on the following reasoning:-

> "We have given our best and very serious considerations to the arguments advanced by Mr. Nariman. We have already indicated, we will have to scrutinise and examine the publication Tata Press Yellow Pages and would have to come to our conclusion as to whether the same is a Telephone Directory or a List of Telephone Subscribers from the point of view of the main object and the dominant purpose of the publication. The fact that has weighed with us most is that even though there are some features which may distinguish the "TATA Press Yellow Pages" from a mere Telephone Directory or a more List of Telephone Subscribers, the publication would nevertheless be of little or no use if the telephone numbers printed therein are omitted or deleted. It may be that the "TATA Press Yellow Pages" may not be a Telephone Directory or a List of Telephone Subscribers only, but we are nevertheless of the clear view that the same is a Telephone Directory or a List of Telephone Subscribers also..... reading the provisions of Rules 452, 458 & 459 together, we will have to hold that even if a telephone directory or List of Telephone Subscribers contain advertisements, may be in large numbers, publication thereof would nevertheless come within the prohibition of Rule 458 as in such a case the publication, even though not merely a Telephone Directory or a List of Telephone Subscribers, is also nevertheless such a telephone directory or List of Telephone Subscribers."

Learned counsel for the appellant has drawn our pointed-attention to the above quoted observations of the Division Bench of the High Court and has vehemently contended that the examination of Tata-pages, even in the light of the Test laid-down by the High Court, would show that the said compilation is not a Telephone Directory. A Bar Association or a Medical Association can publish a List of their respective members. Similarly, according to the learned counsel, the Associations of professionals, traders or businessmen can publish Lists of their respective members. The Tata-pages, he contended, which is a compilation of advertisements, given by businessmen, traders and professionals, cannot be equated with a "list of Telephone Subscribers." It is contended that the Tata-Pages was a Buyer's guide/Trade Directory and its content, character and function are different from the Telephone Directory. The primary purpose of reference to a Telephone Directory is to find out the telephone number of a particular telephone-subscriber whereas the primary purpose of a Buyer's guide such as the Tata - Pages is to enable a consumer/buyer to find out the parties engaged in a particular business or trade for providing a particular service. There is plausibility in the contention of the learned counsel but cannot, by itself, tilt the balance in favour of the appellant.

We are of the view that the answer to the question whether the Tata - Pages is a Telephone Directory within the meaning of Rule 458 or is a Buyers Guide/Trade Directory outside the scope of the said Rule, depends upon the determination of the larger issue whether a simple "commercial advertisement" comes within the concept of "freedom of speech and expression" guaranteed under

Article 19(1)(a) of the Constitution of India. We, therefore, proceed to deal with the constitutional question.

Dr. Abhishek Singhvi, learned counsel supporting the case of the appellant, has contended that the "commercial speech" is protected under Article 19(1)(a) read with Article 19(2) of the Constitution. Mr. Venugopal and Mr. Arun Jaitley, learned counsel appearing for the respondents have, however, contended that a purely commercial advertisement is meant for furtherance of trade or commerce and as such is outside the concept of freedom of speech and expression. Reliance was placed by the learned counsel on the judgment of this Court in Hamdard Dawakhana (WAKF) Lal Kuan, Delhi and Another v Union of India and others [SCR 1960 (2) 671]. A Constitution Bench of this Court speaking through Kapur, J. held as under:

> " An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19(1) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such a case, advertisement is a part of business even though as described by Mr. Munshi its creative part, and it was being used for the purpose of furthering the business of the petitioners and had no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution. In Lewis J. Valentine v. F.J. Chrestensen it was held that the constitutional right of free speech is not infringed by prohibiting the distribution in city streets of handbills bearing on one side a protest against action taken by public officials and on the other advertising matter. The object of affixing of the protest to the advertising circular was the evasion of the prohibition of a city ordinance forbidding the distribution in the city streets of commercial and business advertising matter. Mr. Justice Roberts, delivering the opinion of the court said:
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> "This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or prescribe its employment in these public thoroughfares. We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising ..... If the respondent was attempting to use the streets of New York by distributing commercial advertising, the prohibition of the Code provisions was lawfully invoked against such conduct."

It cannot be said therefore that every advertisement is a matter dealing with freedom of speech nor can it be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Art. 19(1) it seeks to further. The advertisements in the instant case relate to commerce or trade and not to propagating of ideas;

and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Art. 19(1) (a). The main purpose and true intent and aim, object and scope of the Act is to prevent self-

medication or self-treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited. Can it be said that this is an abridgement of the petitioners' right of free speech. In our opinion it is not. Just as in Chamarbaughwala's case 1957 SCR 930 it was said that activities undertaken and carried on with a view to earning profits e.g. the business of betting and gambling will not be protected as falling within the guaranteed right of carrying on business or trade so it cannot be said that an advertisement commending drugs and substances as appropriate cure for certain diseases is an exercise of the right of freedom of speech. Freedom of speech goes to the heart of the natural right of an organised freedom-loving society to "impart and acquire information about that common interest". If any limitation is placed which results in the society being deprived of such right then no doubt it would fall within the guaranteed freedom under Art. 19(1) (a). But if all it does is that it deprives a trader from commending his wares it would not fall within that term. In John W. Rast v. Van Deman & Lewis Company, Mr. Justice Mckenna, dealing with advertisements said:-

> "Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold and the acquisition of the article to be sold constitutes the only inducement to its purchase."

As we have said above advertisement takes the same attributes as the object it seeks to promote or bring to the notice of the public to be used by it.

Examples can be multiplied which would show that advertisement dealing with trade and business has relation with the item "business or trade" and not with "freedom of speech". Thus advertisements sought to be banned do not fall under Art. 19(1) (a).

This Court in Hamdard Dawakhana's case primarily relied on the judgment of the United States Supreme Court in Valentine v Chrestensen for the proposition that "purely commercial advertising" is not protected by Article 19(1)

(a) of the Constitution. Dr. Singhvi has placed reliance on series of judgments of the United States Supreme Court since 1942 when Chrestensen's case was decided to show that the Courts in United States have step-by-step moved away from the Rule in Chrestensen's case, and as on today "purely commercial advertising" is entitled to full "First Amendment'/ protection. We may refer to some of the cases. In 1964 United States Supreme Court ruled in New York Times v Sullivan 376 U.S. 254

that editorial advertising, that is, advertising to promote an idea such as "Save Whale", "Stop War" or "Ban Pesticides" rather than a product like used cars or spaghetti is protected by the First Amendment. In the year 1975 in Bigelow v Virginia 421 U.S. 804 the United States Supreme Court reversed the conviction of a Virginia newspaper editor who had been found guilty of publishing an advertisement which offered assistance to women seeking abortion. Abortion was illegal in Virginia in 1971 when the advertisement was published. The women Pavilion, a New York group, urged women who wanted an abortion to come to New York. Blackmun, J. analysing earlier judgments of the Court observed that speech does not lose the protection of the First Amendment merely because it appears in the form of a commercial advertisement.

Finally, in 1976 the United States Supreme Court has provided a clearer answer in Virginia State Board of Pharmacy v Virginia Citizens Consumer Council, Inc. 425 US

748. The appealees in the said case attacked, as violative of the First Amendment, that part of the statute which provided that a pharmacist licensed in Virginia was guilty of unprofessional conduct if he "publishes, advertises or promotes, directly or indirectly, in any manner whatsoever, any amount, price, fee, premium, discount, rebate or credit terms..... for any drugs which may be dispensed only by prescription." The District Court declared the quoted portion of the statute "void and of no effect". The appellants before the Supreme Court contended that the advertisement of prescription drug price was outside the protection of the First Amendment because it was "commercial speech". Rejecting the argument the Court speaking through Blackmun, J. held as under:-

> "There can be no question that in past decisions the Court has given some indication that commercial speech is unprotected. In Valentine v Chrestensen, supra, the Court upheld a New York statute that prohibited the distribution of any "handbill, circular .... or other advertising matter whatsoever in or upon any street." The Court concluded that, although the First Amendment would forbid the banning of all communication by handbill in the public thoroughfares, it imposed "no such restraint on government as respects purely commercial advertising". 316 US, at 54, 86 L ED 1262, 62 S Ct 920. Further support for a "commercial speech" exception to the First Amendment may perhaps be found in Breard v Alexandria, 341 US 622, 95 L Ed 1233, 71 S Ct 920, 46 Ohio Ops 74, 62 Ohio L Abs 210, 35 ALR 2d 335 (1951), where the Court upheld a conviction for violation of an ordinance prohibiting door-to-door solicitation of magazine subscriptions. The Court reasoned: "The selling...brings into the transaction a commercial feature", and it distingushed Martin v Struthers, supra, where it had reversed a conviction for door-to-door distribution of leaf-lets publicizing a religious meeting, as a case involving "no element of the commercial." 341 US, at 642-643, 95 L Ed 1233, 71 S Ct 920, 46 Ohio Ops 74, 62 Ohio L Abs 210, 35 ALR2d 335..... Since the decision in Breard, however, the Court has never denied protection on the ground that the speech in issue was "commercial speech". That simplistic approach, which by then had come under criticism or was regarded as of doubtful validity by Members of the Court.

> Last Term, in Bigelow v Virginia, 421 US 809, 44 L Ed 2d 600, 95 S Ct 2222 (1975), the notion of unprotected "commercial speech" all but passed from the scene. We reversed a conviction for violation of a Virginia statute that made the circulation of any publication to encourage or promote the processing of an abortion in Virginia a misdemeanor. The defendant had published in his newspaper the availability of abortions in New York. The advertisement in question, in addition to announcing that abortions were legal in New York, offered the services of a referral agency in that State. We rejected the contention that the publication was unprotected because it was commercial.

Chrestensen's continued validity was questioned, and its holding was described as "distinctly a limited one"

> that merely upheld "a reasonable regulation of the manner in which commercial advertising could be distributed."

Here, in contrast, the question whether there is a First Amendment exception for "commercial speech" is squarely before us. Our pharmacist does not wish to editorialize on any subject, cultural, philosophical, or political. He does not wish to report any particularly newsworthy fact, or to make generalized observations even about commercial matters. The "idea" he wishes to communicate is simply this: "I will sell you the X prescription drug at the Y price". Our question, then, is whether this communication is wholly outside the protection of the First Amendment.

Our question is whether speech which does "no more than propose a commercial transaction." Pittsburgh Press Co. v Human Relations comm'n, 413 US, at 385, 37 L Ed 2d 669, 93 S Ct 2553, is so removed from any "exposition of ideas", Chaplinsky v New Hampshire, 315 US 568, 572, 86 L Ed 1031, 62 S Ct 766 (1942), and from "truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government." Roth v United States, 354 US 476, 484, 1 L Ed 2d 1498, 77 S Ct 1304, 14 Ohio Ops 2d 331 (1957), that it lacks all protection. Our answer is that it is not.

Generalizing, society also may have a strong interest in the free flow of commercial information. Even an individual advertisement, though entirely "commercial," may be of general public interest. The facts of decided cases furnish illustrations:

> advertisements stating that referral services for legal abortions are available, Bigelow v Virginia, supra; that a manufacturer of artificial furs promotes his product as an alternative to the extinction by his competitors of fur-bearing mammals, see Fur Information & Fashion Council, Inc. v. E.F. Timme & Son, 364 F supp 16 (SDNY 1973); and that a domestic producer advertises his product as an alternative to imports that tend to deprive American residents of their jobs.
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> Moreover, there is another consideration that suggests that no line between publicly "interesting" or "important" commercial advertising and the opposite kind could ever

be drawn. Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable..... And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered. Therefore, even if the First Amendment were thought to be primarily an instrument to enlighten public decision making in a democracy, we could not say that the free flow of information does not serve that goal."

It is, thus, obvious that the United States Supreme Court in Virginia Board case has virtually overruled Valentine's case decided in 1942. The Court has ruled in clear terms that the Virginia statute which had the effect of prohibiting pharmacies from advertising the price of prescription drugs violated the First Amendment protection.

In John R. Bates and Van o'Steen vs. State Bar of Arizona 53 L. Ed. 2nd 810, two attorneys licensed to practice law in Arizona placed an advertisement in a phoenix newspaper, stating that they were offering "legal services at very reasonable fees" and listing their fees for various matters. The advertisement was in violation of disciplinary rules of the Supreme Court of Arizona which prohibited Arizona lawyers from publicizing themselves, their partners or their associates by "commercial" means. On a complaint filed by the President of the State Bar, the Board of Governors recommended a one week suspension for each attorney. The two lawyers then sought review in the Supreme Court of Arizona which rejected their contention that the disciplinary rules infringed their First Amendment rights. On an appeal, the United States Supreme Court reversed the judgment of the Supreme Court of Arizona on the question of First Amendment rights. Speaking for the court Blackmun, J. held that the blanket suppression of advertising by attorneys violated a free speech clause of First Amendment. The Court rejected arguments that such advertising would have an adverse effect on professionalism, would be inherently misleading, would have an adverse effect on the administration of justice, would produce undesirable economic effects, and would have an adverse effect on the quality of legal services. The Court, however, further held that such advertising, if false, deceptive or misleading could continue to be restrained, and that, as with other varieties of speech, such advertising could be made subject to reasonable restrictions on the time, place and manner of such advertising.

After the decision in Virginia Board case, it is almost settled law in the United States that "commercial speech" is entitled to the First Amendment protection. The Supreme Court has, however, made it clear that Government was completely free to

> recall "commercial speech" which is false, misleading, unfair, deceptive and which proposes illegal transactions. A political or social speech and other public- affairs - oriented discussions are entitled to full First Amendment protection whereas a "commercial speech" may be restricted more easily whenever the government can show substantial justification for doing so.
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> More recent judgments of the Supreme Court of Unites States in Central Hudson Gas & Electric Corp. v. Public Service Commission 447 US 557, Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico 92 L Ed. 2nd 266 and Board of Trustees of the State University of New York vs. Todd Fox 106 L Ed. 388 clearly indicate that in "commercial speech" cases a four-part analysis has developed. At the outset, it must be determined whether the advertising is protected by the First Amendment. For commercial speech to come within that provision it must concern lawful activity and not be misleading. Next it is seen whether the asserted governmental interest is substantial. If both inquiries yield positive answers then it must be determined whether the regulation directly advances the governmental interest asserted and whether it is more extensive than is necessary to serve that interest.

Unlike the First Amendment under the United States Constitution, our Constitution itself lays down in Article 19(2) the restrictions which can be imposed on the fundamental right guaranteed under Article 19(1) (a) of the Constitution. The "Commercial speech" which is deceptive, unfair, misleading and untruthful would be hit by Article 19(2) of the Constitution and can be regulated/prohibited by the State.

The Court in Hamdard Dawakhana's case was dealing with advertising of prohibited drugs and commodities. The Court came to the conclusion that the sale of prohibited drugs was not in the interest of the general public and as such "could not be a speech" within the meaning of freedom of speech and expression under Article 19(1) (a) of the Constitution. The Court further held in the said case that an advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. Hamdard Dawakhana's case was considered by this Court in Indian Express Newspapers (Bombay) Private Ltd. & Ors. etc. etc. vs. Union of India & Ors. etc.etc. 1985(2) SCR 287. The observations in Hamdard Dawakhana's case to the effect that advertising by itself would not come within Article 19(1) (a) of the Constitution, were explained by this Court in Indian Express Newspapers's case in the following words:

> "We have carefully considered the decision in Hamdard Dawakhana's case (supra). The main plank of that decision was that the type of advertisement dealt with there did not carry with it the protection of Article 19(1) (a). On examining the history of the legislation, the surrounding circumstances and the scheme of the Act which had been challenged there namely the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 (21 of 1954) the Court held that the object of that Act was the prevention of self-medication and self-treatment by prohibiting instruments which may be used to advocate the same or which tended to spread the evil.... In the

> above said case the Court was principally dealing with the right to advertise prohibited drugs, to prevent self-medication and self-treatment. That was the main issue in the case. It is no doubt true that some of the observations referred to above go beyond the needs of the case and tend to affect the right to publish all commercial advertisements.

Such broad observations appear to have been made in the light of the decision of the American Court in LEWIS J.

Valentine vs. F.J. Chrestensen (supra). But it is worthy of notice that the view expressed in this American case has not been fully approved by the American Supreme Court itself in its subsequent decisions. We shall refer only to two of them. In his concurring judgment in William B. Cammarano v. United States of America Justice Douglas said "Valentine vs. Chrestensen..... held that business of advertisements and commercial matters did not enjoy the protection of the First Amendment, made applicable to the States by the Fourteenth. The ruling was casual, almost off hand. And it has not survived reflection". In Jeffrey Gole Bigelow v. Commonwealth of Virginia the American Supreme Court held that the holding in Lewis J. Valentine v. F.J. Chrestensen (supra) was distinctly a limited one. In view of the foregoing, we feel that the observations made in the Hamdard Dawakhana's case (supra) too broadly stated and the Government cannot draw much support from it. We are of the view that all commercial advertisements cannot be denied the protection of Article 19(1) (a) of the Constitution merely because they are issued by businessmen."

The combined reading of Hamdard Dawakhana's case and the Indian Express Newspapers's case leads us to the conclusion that "commercial speech" cannot be denied the protection of Article 19(1) (a) of the Constitution merely because the same are issued by businessmen.

Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the life blood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtains 60/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising "subsidy" is crucial. Without advertising, the resources available for expenditure on the "news" would decline, which may lead to an erosion of quality and quantity. The cost of the "news" to the public would increase, thereby restricting its "democratic" availability.

A Constitution Bench of this Court in Sakal Papers (p) Ltd. and others. vs. Union of India AIR 1962 SC 305 considered the constitutional validity of the Newspaper (Price and Page) Act, 1956. The said Act empowered the Government to regulate the prices of newspaper in relation to their pages and sizes and to regulate allocation of space for advertisement matter. This Court held that the Act placed restraints on the freedom of press to circulate. This Court further held that the curtailment of the advertisements would bring down the circulation of the newspaper and as such would be hit by Article 19(1) (a) of the Constitution of India. In Sakal Papers's case it was argued before this Court

that the publication of advertisements was a trading activity. The diminution of advertisement revenue could not be regarded as an infringement of the right under Article 19(1) (a). It was further argued before this Court that devoting large volume of space to advertisements could not be the lawful exercise of the right of freedom to speech and expression or the right of dissemination of news and views. It was also contended that instead of raising the price of the newspaper the object could be achieved by reducing the advertisements. This Court rejected the contentions and held as under:-

> "Again S.3(1) of the Act in so far as it permits the allocation of space to advertisements also directly affects freedom of circulation. If the area for advertisements is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements ...If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Article 19 (1) (a)."

This Court in Bennett Coleman & Co. & Ors. vs.Union of India & Ors. 1973 2 SCR 757 held as under:-

> "The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19 (2). If the area of advertisements is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19 (1) (a) on the aspects of propagation, publication and circulation."

Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large is benefitted by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". In relation to the publication and circulation of newspapers, this Court in Indian Express newspaper's case, Sakal paper's case and Bennett Coleman's case has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1) (a) on the aspects of

propagation, publication and circulation. Examined from another angle, the public at large has a right to receive the "Commercial speech". Article (19) (1) (a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.

We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution.

Adverting to the question whether Tata's compilation is a telephone directory as envisaged under the Rules, we may examine the scheme of the Rules. Rule 452 provides that a copy of the telephone directory shall be supplied free of charge for each telephone, extension or party line, rented by the subscriber. Although the expression "Telephone Directory" has not been defined under the Rules, but Rule 453 clearly provides that an entry in the Telephone Directory shall contain the telephone number, the initials, the sir-name and the address of the subscriber or user. Rule 457 makes a telephone directory to be the property of the department. It provides that the telephone directory shall remain the exclusive property of the department and shall be delivered to it on demand. The department reserves the right to amend or delete any entry in the telephone directory at any time and undertakes no responsibility for any omission. It shall not entertain any claim or compensation on account of any entry in or omission from the telephone directory or of an error therein. Then come the two crucial rules. Rule 458 under the heading "Publishing of Telephone Directory"

> provides that except with the permission of the telegraph authority, no person shall publish any list of telephone subscribers. Rule 459 deals with "advertisements" and lays down that the telegraph authority may publish or allow the publication of advertisements in the body of the telephone directory. It is no doubt correct that a telephone directory is an essential instrumentality in connection with the peculiar service which the Union of India offers for the public benefit and convenience. It is as much so as is the telephone receiver itself, it would be practically useless for the receipt and transmission of messages without the accompaniment of such directories. The telephone service being a public utility service, the telephone authority has rightly been given powers under the Act and the Rules to regulate the form and contents of the telephone directory. In the development of this form of public utility service, the telegraph authority has found it practicable and profitable to diminish the cost and increase the profits of operation by making use of its directories as a means and form of advertising available to its subscribers. In the typical classified telephone directory, or the "yellow pages" section of the directory published by the Nigam, there are alphabetical light-faced type listing (for which there is usually no charge), alphabetical bold faced type listings, alphbetical in-column business card listings and display advertising. "Yellow pages" of the telephone directory are wholly paid

advertising. It cannot be disputed that the paid advertising,apart from the light-faced free listing, is not in the nature of a service rendered by a utility. The "Yellow Pages" attached to the telephone directory issued by the Nigam cannot be a part of the Nigam's public telephone service.

Rules 458 and 459 of the Rules have to be interpreted in the light of our findings that "commercial speech" by itself is a fundamental right under Article 19(1) (a) of the Constitution and the paid advertisements comprising "Yellow Pages" attached to the telephone directory is not a public utility service.

Right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution can only be restricted under Article 19(2). The said right can not be denied by creating a monopoly in favour of the government or any other authority. "Publication of advertisements" which is a "commercial speech" and protected under Article 19(1)(a) of the Constitution cannot be denied to the appellants on the interpretation of rule 458 and 459 of the Rules. The plain language of the Rules indicate that the prohibition under rule 458 of the Rules is only in respect of publishing "any list of telephone subscribers". By no stretch of imagination "publication of advertisements" can be equated with a "list of telephone subscribers A "list"

is a number of names having something in common written out systematically one beneath the other. "List of telephone subscriber" in terms of Rule 458 of the Rules would have to be compiled only on the criterion of the persons listed being telephone subscribers. No person who is not a telephone subscriber could be eligible for inclusion. The said list would necessarily be restricted to the area serviced by the Nigam. On the other hand "Tata Press yellow pages" is a Buyer's Guide comprising of advertisements given by traders, businessmen and professionals and the only basis/criterion applied for acceptance/ publication of advertisements is that an advertiser should be a trader, businessman or professional.

The scheme of the Rules make it clear that advertisements are treated differently under the Rules from "list of telephone subscribers". Rule 458 of the Rules intends to protect the exclusive property rights of Nigam/Union of India created under Rule 457 in respect of the telephone directory prepared in terms of Rule 453.

"Publication of advertisements" being a non-utility service cannot come within the prohibition imposed by Rule 458 of the Rules.

We, therefore, hold that the Nigam/union of India cannot restrain the appellant from publishing "Tata Press yellow pages" comprising paid advertisements from businessmen, traders and professionals. We are, however, of the view that the appellants cannot publish any "list of telephone subscribers" without the permission of the telegraph authority. Rule 458 of the Rules is mandatory and has to be complied with. The appellant shall not publish in the "Tata Press yellow pages" any entries

similar to those which are printed in the 'white Pages' of the "telephone directory" published by the Nigam under the Rules. We make it clear that the appellant cannot print/publish an entry containing only the telephone number, the initials, the surname and the address of the businessmen, trader or professional concerned.

We allow the appeal in the above terms and set aside the judgments of the learned Single Judge and the Division Bench of the High Court. While holding that Rule 458 of the Rules is mandatory, we dismiss the suit filed by the respondents. We leave the parties to bear their own costs.