

Lakhanpal National Ltd vs M.R.T.P. Commission And Another on 2 May, 1989

Equivalent citations: 1989 AIR 1692, 1989 SCR (2) 979, AIR 1989 SUPREME COURT 1692, 1989 (3) SCC 251, (1989) 2 JT 543 (SC), 1989 2 JT 543, (1989) 2 COM LJ 159, (1989) 38 DLT 310

Author: L.M. Sharma

Bench: L.M. Sharma, S.R. Pandian

PETITIONER:
LAKHANPAL NATIONAL LTD.

Vs.

RESPONDENT:
M.R.T.P. COMMISSION AND ANOTHER

DATE OF JUDGMENT 02/05/1989

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
PANDIAN, S.R. (J)

CITATION:
1989 AIR 1692 1989 SCR (2) 979
1989 SCC (3) 251 JT 1989 (2) 543

ACT:
Monopolies and Restrictive Trade Practices Act, 1969 :
Section 36A(1)(i) and (v)--Unfair Trade practice--Test to be
applied--Examine whether representation contains a false
statement--Contains an element of misleading a reasonable
person.

HEADNOTE:
The MRTP Commission--respondent--in the appeal issued a
show cause notice under Section 36-B of the Monopolies and
Restrictive Trade Practices Act, 1969 to the appellant
company informing that a proceeding had been instituted for
making an inquiry whether the said Company was indulging in
certain unfair trade practices prejudicial to the public
interest within the meaning of s. 36-A of the Act. It was

alleged in the notice that although the appellant company was manufacturing 'Novino' Batteries in collaboration with M/s Mitsushita Electric Industrial Co. Ltd. and not with National Panasonic of Japan, it was issuing advertisements announcing that 'Novino' Batteries were manufactured in collaboration with National Panasonic of Japan using National Panasonic techniques, and that the said representation was false and misleading and thereby causing loss or injury to the consumers.

The Company in its reply to the said notice denied having made any wrong representation in its advertisement, and asserted that the company had actually entered into a collaboration agreement with M/s Mitsushita Electric Industrial Ltd. for the manufacture of dry cell batteries, and was adopting the process employed by Mitsushita Ltd. for manufacturing 'Novino' Batteries. The Company further stated that Mitsushita Ltd. of Japan was better known by its products described by the names 'National' and 'Panasonic' and that there was therefore no question of misleading anybody by the description of the Japanese Company by its products.

Rejecting the Company's explanation the Commission held that bearing in mind the Indian conditions the use of 'National' and 'Panasonic' to signify collaboration will have a misleading effect on the minds

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of common class of customers particularly when Novino Batteries is projected and advertised side by side with National, Panasonic and Technics Batteries in advertisements. The Commission also refused to accept the plea of the Company that the advertisements have mentioned the brand names instead of the manufacturing company since 'National' and 'Panasonic' were well known names in India while the manufacturing company Mitsushita Ltd. was not as a plea of good defence.

On the question whether the appellant company indulged in unfair trade practice under clauses (i) and (v) of s. 36-A(1) of the M.R.T.P. Act, 1962.

Allowing the appeal, the Court,

HELD: 1.(a) The M.R.T.P. Act as it originally stood did not contain any provision for protection of consumers against false or misleading advertisements or other similar and unfair trade practices. By providing for measures against restrictive and monopolistic trade practices, it was perhaps assumed that the consumers also, as a result, will get a fair deal. However, experience indicated otherwise, and following the recommendations of a Committee, it was considered necessary to amend the Act. Accordingly, sections 36-A to 36-E in part B were inserted in Chapter V of the Act by an amendment in 1984. [984E-F; G]

2. It would be more proper for the appellant Company to give the full facts by referring to Mitsushita Ltd. by its correct name and further stating that its products are known

by the name "National" and "Panasonic". [986C]

3. An advertisement mentioning merely Mitsushita Ltd. may, therefore, fail to convey anything to an ordinary buyer unless he is also told that it is the same Company which manufactures products known to him by the names "National" and "Panasonic". If such were the position there would not have been any scope for objection. However, the same effect is produced by the impugned advertisements. There is no other company with the name of 'National' and 'Panasonic', and there is no scope for any confusion on that score. [985G-H; 986A]

4. Where the reference is being made to the standard of the quality, it is not material whether the manufacturing company is indicated by its actually correct name or by its description with reference to its products. [986B]
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5. The definition of 'unfair trade practice' in s. 36-A is not inclusive or flexible, but specific and limited in its contents. The object is to bring honesty and truth in relationship between the manufacturer and consumer. When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. The position will have to be viewed with objectivity in an impersonal manner. [985A-D]

Halsbury's Laws of England, 4th Edn. paras 1044 and 1045; relied on.

6. The erroneous description of the manufacturing Company in the advertisements in question does not attract s. 36-A of the M.R.T.P. Act. [986B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 764 (NM) of 1988.

From the Judgment and Order dated 13.11.1987 of the Monopolies and Restrictive Trade Practices Commission in unfair Trade Practices Enquiry No. 76 of 1985. G.L. Sanghi, Parveen Anand, S.K. Mehta, Dhruv Mehta, S.M. Satin and Atul Nanda for the Appellant. Anil Dev Singh and Hemant Sharma for the Respondents. The Judgment of the Court was delivered by SHARMA, J. This appeal under s. 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) is directed against the decision of the Monopolies and Restrictive Trade Practices Commission dated November 13, 1987 in the Unfair Trade Practices Enquiry No. 76 of 1985 passed under s. 36-D(1) of the Act forbidding the appellant Company from issuing certain type of

advertisement as indicated in the order.

2. The Commission issued a show cause notice under s. 36-B of the Act to the appellant Company informing it that a proceeding had been instituted for making an inquiry whether the Company was indulging in certain unfair trade practices prejudicial to public interest within the meaning of s. 36-A. A copy of the notice has been attached to the petition of appeal as Annexure 'C', wherein it was alleged that,

(i) although the Company was manufacturing 'Novino' batteries in collaboration with M/s Mitsushita Electric Industrial Co. Ltd, and not with National Panasonic of Japan, it was issuing advertisements announcing that 'Novino' batteries are manufactured in collaboration with National Panasonic of Japan using National Panasonic techniques, and

(ii) the representation that 'Novino' batteries are manufactured by joint venture or collaboration with National Panasonic was false and misleading and thereby causing loss or injury to the consumers.

In its reply the Company (appellant before us) denied to have made any wrong representation in the advertisements. It was asserted that the Company has actually entered into a collaboration agreement with M/s Mitsushita Electric Industrial Ltd. of Japan for the manufacture of dry cell batteries, and was adopting the process for manufacturing 'Novino' batteries as is employed by Mitsushita Ltd. The agreement has been duly approved by the Ministry of Industry, Government of India. It is further stated that the Mitsushita Ltd. of Japan is better known by its products described by the names "National" and "Panasonic" and there is no question of misleading anybody by the description of the Japanese Company by its products. Rejecting the appellant's explanation, the Commission passed the impugned order.

3. As is clear from the show cause notice, it has been assumed that the appellant Company is manufacturing 'Novino' batteries in collaboration with Mitsushita Ltd., but the question is whether, in the circumstances, it can claim that it is making "batteries in collaboration with National Panasonic of Japan", and further whether the act, complained of, will be covered by the provisions of s. 36-B and 36-D of the Act authorising the respondent Commission to make an enquiry and issue appropriate directions. The expression "unfair trade practice" has been defined in s. 36-A as a trade practice which adopts any or more of the practices enumerated in the section. It has been contended before us by the learned counsel for the respondent, and the judgment under appeal also holds, that the case is covered by clauses

(i) and (v) of s. 36-A(1) of the Act. The relevant portion of s. 36-A is reproduced below:

"36A Definition of unfair trade practice.

In this part, unless the context otherwise requires, 'Unfair trade Practice' means a trade practice which, for the purpose of promotion the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following

practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise, namely:

(1) The practice of making any statement, whether orally or in writing or by visible representation which,

(i) falsely represents that the goods are ' of a particular standard, quality, grade, compo-

sition, style or model; '

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier. does not have;"

4. It is the admitted position that "National" and "Panasonic" are the names given by the Mitsushita Ltd. to some of its products, and are not the names of the manufac- turing company itself. The advertisements XXX therefore, do not state correctly when they claim that the appellant Company is working in collaboration with "National" and "Panasonic". Instead, they should have mentioned the Company by its correct name in the advertisements. The question is as to whether these advertisement come within the scope of clauses (i) and (v). The Commission in the impugned judgment has said:

"It is true that the Director (Research) has not carried out any practical research to discover how far the National & Panasonic Batteries of Japan and the Novino Batteries manufactured by the respondent company vary in or conform to quality, benefits and durability and to what extent the use of the names Pana- sonic and National to signify collaboration has been confusing for the customer m his choice of Novino Battery. Yet I do feel that bearing in mind the Indian condi- tions the use of National and Panasonic to signify collaboration will have a misleading effect on the minds of the common class of customers, particularly when Novino Battery is projected in the setting of advertisement Ex. A-1/a side by side the National. Panasonic and Technics Batteries."

5. The show cause notice served on the appellant does not take any exception to the use of the word "collabora- tion" in the advertisement in question. The grievance is against the use of the names of the product "National" and "Panasonic" in place of the Company which is manufacturing them. The issue thus is confined by the charge in the show cause notice which is very limited in its scope. The Commis- sion has taken note of the case of the appellant that since "National" and "Panasonic" are well-known names in India while their manufacturing company, the Mitsushita Ltd., is not, the advertisements have mentioned the brand names instead of the manufacturing company; but has refused to accept this plea as a good defence. We do not agree.

6. The Act as it originally stood did not contain any provision for protection of consumers against false or misleading advertisements or other similar and unfair trade practices. By providing for

measures against restrictive and monopolistic trade practices, it was perhaps assumed that the consumers also, as a result, will get a fair deal. However, experience indicated otherwise, and following the recommendations of a Committee, it was considered necessary to amend the Act. In the fast changing modern world of today advertising goods is a well-recognised marketing strategy. The consumers also need it, as the articles which they require for their daily life are of a great variety and the knowledge of an ordinary man is imperfect. If the manufacturers make available, by proper publicity, necessary details about their products, they come as great help to the man in the street. Unfortunately, some of the advertisements issued for this purpose make exaggerated and sometime baseless representations about the quality, standard and performance, with an object of attracting purchasers. It was, therefore, considered necessary to have statutory regulations insisting that, while advertising, the seller must speak the truth. Accordingly sections 36-A to 36-E in part B were inserted in Chapter V of the Act by an amendment in 1984.

7. However, the question in controversy has to be answered by construing the relevant provisions of the Act. The definition of "unfair trade practice" in s. 36-A mentioned above is not inclusive or flexible, but specific and limited in its contents. The object is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue can not be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly a statement, which may be inaccurate in the technical literal sense can convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation, complained of, contains the element of misleading the buyer. Does a reasonable man on reading the advertisement form a belief different from what the truth is? The position will have to be viewed with objectivity, in an impersonal manner. It is stated in Halsbury's Laws of England (Fourth Edition, paragraphs 1044 and 1045) that a representation will be deemed to be false if it is false in substance and in fact; and the test by which the representation is to be judged is to see whether the discrepancy between the fact as represented and the actual fact is such as would be considered material by a reasonable representee.

"Another way of stating the rule is to say that substantial falsity is, on the one hand, necessary, and, on the other, adequate, to establish a misrepresentation" and "that 'where the entire representation is a faithful picture or transcript of the essential facts, no falsity is established, even though there may have been any number of inaccuracies in unimportant details. Conversely, if the general impression conveyed is false, the most punctilious and scrupulous accuracy in immaterial minutiae will not render the representation true.'" Let us examine the relevant facts of this case in this background.

8. The Mitsushita Ltd. is not a popular name in this country while its products "National" and "Panasonic" are. An advertisement mentioning merely Mitsushita Ltd. may, therefore, fail to convey anything to an ordinary buyer unless he is also told that it is the same Company which manufactures products known to him by the names "National" and "Panasonic". If such were the position, there would not have been any scope for objection. However, in our view the same effect is produced by the impugned advertisements. It has to be remembered that there is no other company with the name of "National" and "Panasonic" and there is no scope for any confusion on that score. Where the reference is being made to the standard of the quality, it is not material whether the manufacturing Company is indicated by its accurately correct name or by its description with reference to its products. We, therefore, hold that the erroneous description of the manufacturing Company in the advertisements in question does not attract s. 36-A of the Act, although we would hasten to add that it would be more proper for the appellant Company to give the full facts by referring to Mitsushita Ltd. by its correct name and further stating that its products are known by the names "National" and "Panasonic".

9. The learned counsel for the respondent Commission suggested that the appellant was not entitled to claim "collaboration" with the Japanese Company on the basis of the agreement mentioned earlier. As the appellant Company is only getting technical knowledge and assistance under the agreement, it is not permissible to claim 'Novino' batteries as the product of joint venture. The argument was rightly repelled on behalf of the appellant on the ground that this aspect cannot be examined in the present case in view of the limited scope of the charges as mentioned in the show cause notice quoted above. If so advised, the Commission will have to hold a fresh inquiry after issuing another show cause notice if it desires to pursue this aspect.

10. The learned counsel for the appellant also raised several other points in support of the appeal, one of them being that from the facts and circumstances of the case it can not be held that the impugned advertisements are capable of causing any loss or injury to the consumers. In view of our decision, as mentioned earlier, it is not necessary to deal with the other arguments.

11. For the reasons mentioned above the impugned judgment is set aside and the appeal is allowed, but in the circumstances, without costs.

N.V.K.

Appeal allowed.