

CASE NO.:
Appeal (civil) 3224 of 1993

PETITIONER:
Hindustan Ciba Geigy

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 20/11/2002

BENCH:
CJI, H.K. Sema & S.B. Sinha..

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The substantial question of law involved in this appeal under Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 ('the Act') is whether under Section 36A of the Act, (as it stood then), causation of loss or injury to the consumer of goods or service is a sine qua non for initiation of a proceeding thereunder.

One H.D. Murzello made a complaint before the Director General of Investigation and Registration alleging unfair trade practice against the appellant herein as regards an advertisement issued by them which appeared in "The Times of India" dated 16th September, 1986 to the following effect:

"Aerocol's family background:
Aerocol's credibility as a wonder wood adhesive stems from 2 facts

* An addition to the Araldite and Aerolite family, it is a product from Hindustran Ciba Geigy;.

* Already a market leader in UK, it is known for living up to its promise."

On the said complaint, the Director General was directed to make a preliminary enquiry. Upon such inquiry, a report was submitted on 15th April, 1987. On the basis of the recommendations made in the said investigation report, a Notice of Enquiry was issued by the Commission on 30th July, 1987 against the appellant herein; the relevant portion thereof is as under :-

"The respondent abovementioned is engaged in selling adhesive under the trade name Aerocol. It had issued an advertisement that appeared in Times of India dated 16.9.1986, making claim that the product is manufactured by it. It has come to the notice of the Commission that the said product is manufactured by M/s Kiran Industries. The respondent by misrepresenting to the public that the product is manufactured by it while it is manufactured by some other company has caused loss and injury to the consumers and thereby indulged in the unfair trade practice falling within the purview of Section

36A(1)(v) of the Act.

The respondent had also claimed that its product is the market leader in United Kingdom. It has come to the notice of the Commission that the claim made by the respondent has not been duly substantiated by it. The respondent, by making such tall claim, has caused loss and injury to the consumer and indulged in the unfair trade practice falling within the meaning of Section 36A(1)(i) of the Act."

Pursuant to or in furtherance of the aforementioned Notice of Enquiry, the appellant filed their reply not only controverting the allegations raised therein but also raised preliminary objection as regards maintainability thereof; whereupon the Commission, framed the following issues:-

"1) Is the enquiry not legally maintainable?

2) Did the respondent indulge in any unfair trade practice as alleged in the N.I.E. and PIR?

3) In case Issue No.2 is decided in the affirmative, is the unfair trade practice prejudicial to the public interest or to the interest of any consumer or consumers generally?

4) Relief."

The Commission accepted the arguments raised on behalf of the counsel for the Director General and held that the words "thereby causes loss or injury to the consumer" would not mean actual loss or injury. The Commission in aid of its aforementioned finding, relied upon the decision of larger Bench in Colgate Palmolive (India) Ltd. v. M.R.T.P. Commission & Ors. in U.T.P.E. No.41 of 1984 decided on 19th June, 1991.

Section 36A of the Act, as it stood then, reads as under :-

"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 promoting 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 :-

A bare perusal of the aforementioned provision would clearly go to show that an unfair trade practice would mean a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the practices specified therein adopted and as a result thereof loss or injury has been caused to the consumers of such goods or services, either by eliminating or restricting competition or otherwise. It would furthermore clearly go to show that the two conditions precedent mentioned therein are required to be read conjunctively and not disjunctively.

Thus, the aforementioned provision, in our considered opinion, leaves no manner of doubt that an inquiry can be initiated against the noticee not only when it adopts or one or more practices specified therein but also thereby it must cause loss or injury to the consumers.

Furthermore from a perusal of the notice dated 30.7.1987 itself it would appear that definite allegations were made therein that by reason of the impugned action on the part of the Appellant, the consumers suffered loss or injury.

The Commission, therefore, in our opinion, committed a manifest error in holding that the actual loss or injury need not be caused to the consumers. This aspect of the matter has been considered by this Court in H.M.M. Ltd. v. Director General, Monopolies and Restrictive Trade Practices Commission [(1998) 6 SCC 485], wherein it was held :

"For holding a trade practice to be an unfair trade practice, therefore, it must be found that it causes loss or injury to the consumer. Insofar as prizes are concerned, there has to be the intention of not providing them as offered or creating the impression that they are being given or are being offered free of charge when in fact they are fully or partly covered by the amount charged in the transaction as a whole. The conduct of a lottery for the purpose of promoting the sale, use or supply of a product is an unfair trade practice. It is difficult to see clear sustainable findings on the these aspects in the judgment under appeal."

Be it noted that the decision of the larger Bench of the Commission in Colgate Palmolive (India) Ltd., whereupon the Commission relied upon has been reversed by this Court in Civil Appeal Nos.891 of 1993 etc. by a judgment delivered this date.

For the aforementioned reasons, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed but in the facts and circumstances of the case, there will be no order as to costs.