

CASE NO.:
Appeal (civil) 891 of 1993

PETITIONER:
Colgate Palmolive (India) Ltd.

RESPONDENT:
M.R.T.P. Commission & Ors.

DATE OF JUDGMENT: 20/11/2002

BENCH:
CJI. & S.B. Sinha.

JUDGMENT:

J U D G M E N T

W I T H

CIVIL APPEAL NOS.2446 OF 1993 AND 2965 OF 1989

S.B. SINHA, J :

Interpretation of Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 ('the M.R.T.P. Act') is in question in this batch of appeals which arise out of the judgments and orders passed by the Monopolies and Restrictive Trade Practices Commission ('the Commission'), New Delhi whereby and where-under advertisements issued by the appellant herein announcing a contest was held to be an unfair trade practice within the meaning thereof.

The fact of the matter is being noted from Civil Appeal No.891 of 1993 Colgate Palmolive (India) Ltd. vs. Monopolies & Restrictive Trade Practices Commission & Ors, .

The appellant had inserted an advertisement in several newspapers in September, 1984 announcing a contest known as "Colgate Trigard Family Good Habits Contest". 'Trigard' is the name of tooth-brush manufactured by the appellant. By reason of the said advertisement, a contest apparently for the purpose of educating the families for inculcating good habit of taking care of dental health was announced.

The brief particulars of the contest are as under:-

As a condition precedent to participating in the contest each prospective participant was required to send two upper portion of the cartons in which the Trigard Tooth-brushes were sold. These two upper portions of the carton were to be sent along with each entry form which was required to bear the dealers' name and address duly rubber-stamped on the form.

Obviously this necessitated the purchase of two Trigard Colgate brushes by a prospective participant in the contest. The entry form contained four questions, each with two alternative answers which were also printed. The contestant was required to tick mark the correct answer.

By way of illustration the appellant had already ticked the correct alternative in the case of first question which was as follows :-

"Brush in the morning;

- (a) only in the morning;
- (b) in the morning and after every meal"

In the form alternative (b) had been ticked.

There were similar three questions with alternative answers. Anyone with an ordinary knowledge of dental health could tick mark the correct answer to those questions. But this was not enough. In addition to answering

the questions as mentioned above, each contestant had to write a sentence not exceeding ten words describing as to why the contestant's family used Colgate Trigard Tooth-brush. The best entry in this regard would win the first prize. There were several other prizes for second, third and fourth winners. In all there were fifty prizes.

Appellant further offered 825 consolation prizes of Rs.100/- each and 1200 early bird prizes of Rs.50/- each to be awarded to those 100 entries which were received first every week. The last mentioned prizes were irrespective of whether the answers to the questions were correct or not and irrespective of the merit of the slogan which was to be provided by the contestant.

A complaint was made to the Commission alleging that the said contest which was organised by the appellant for the purpose of promotion of sale of its product was in its own interest and prejudicial to the interest of the consumer generally as a result whereof serious injury or loss to the consumer concerned was caused. The complainant alleged that such contests fell within clause (b) of paragraph 3 of Section 36A of the M.R.T.P. Act.

On receipt of the said complaint, an investigation was directed to be made, pursuant whereof and in furtherance whereof, upon an enquiry, a preliminary investigation report was submitted by the Director General, who also came to the conclusion that the said contest was covered by Section 36A(3)(b) of the M.R.T.P. Act.

In terms of the recommendations made by the Director General, a notice of enquiry dated 3rd December, 1984 was issued, the relevant portion whereof reads thus :-

"AND WHEREAS on perusal of the above-said complaint and preliminary investigation report submitted by the Addl. Director General, it appears to the Commission that the Respondent is indulging in the Trade Practice of conducting a contest (Colgate Trigard Family Good Habits Contest) for the purpose of promoting the sale of its product (Tooth Brushes) and also for the purpose of indirectly promoting its business interest;

AND WHEREAS it appears to the Commission that such trade practice is an unfair trade practice causing injury and loss to the consumers (of tooth brushes);

AND WHEREAS it appears that the said contest is arbitrary in nature and eliminates competition among the manufacturers of tooth brushes and thus amounts to a restrictive trade practice:"

The appellant herein filed his reply pleading, inter alia, that such contest did not cause loss or injury to the consumers by eliminating and restricting competition or otherwise. It was contended that the contest was educative inasmuch as by inducing the users of the tooth-brushes to think upon the questions of the contest, they would be made aware of the necessity to keep good dental health. It was pointed out that the best answer to the question was to be judged by three eminent persons from different fields being the Editor of Illustrated Weekly, the Editor of Eves Weekly and a T.V. personality and thus there was no element or chance of arbitrariness in the selection of the winning slogan.

A Bench of the Commission consisting of Mr. H.C. Gupta and Mr. D.C. Aggarwal heard the said enquiry. Mr. Gupta came to the conclusion that there was no loss or injury caused to the consumers; whereas Mr.

Aggarwal differed from the said view holding that the loss or injury was inherent in the case of trade practices mentioned in paragraph 3 of Section 36A of the MRTPA Act.

As the members of the Division Bench of the Commission did not formulate any question to be decided by a third member, the matter was directed to be heard by a Full Bench. By reason of the judgment under appeal, the Commission, inter alia, agreed with the following findings of Mr. Aggarwal :

"..and thereby causes loss or injury to the consumers" are words of description which indicate that the trade practice described in Section 36A of the Act are vehicles of loss or injury."

It was further held :

"The contest ceases to be innocent if it is held for the purpose of promoting the sale or the business interests of the organiser of that contest. Some of the features of the contest under examination may be noted. The contest induces the consumer to buy minimum two tooth brushes to enable him to participate in the contest. If he wants to send more entries he is naturally required to purchase proportionately greater number of tooth brushes. There is no ceiling on the number of entries to be sent by the contestant. An obnoxious feature of this contest is about the prizes which were awarded to the persons whose entries were received early in the week. This aspect of the contest has nothing to do with the skill and was based totally on chance. The number of losers in terms of money in this part of the contest cannot be insignificant. The early bird aspect of the contest was purely in the nature of lottery."

Mr. Ashok Desai, learned Senior Counsel appearing on behalf of the appellant would, in support of the Appeal, urge that the Commission committed a manifest error of law in arriving at the aforementioned conclusion by misreading and misinterpreting the provisions of Section 36A(3)(b) of the M.R.T.P. Act. The learned counsel pointed out that the Commission did not find any actual loss or injury caused to the consumers by reason of the said advertisement nor any allegation in that behalf had been made. It was submitted that in a case of this nature even no public interest was involved. In support of this contention, the learned counsel has placed strong reliance upon a judgment of a Division Bench of this Court in H.M.M. Ltd. v. Director General, Monopolies & Restrictive Trade Practices Commission [(1998) 6 SCC 485] , (wherein one of us Hon. G.B. Pattanaik, CJI. was a member).

Section 36A(3)(b) as it stood at the relevant time 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 :-

xxx

xxx

xxx

xxx

3(b) the conduct of any contest, lottery, game

of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;"

A bare perusal of the aforementioned provision would clearly indicate that the following five ingredients are necessary to constitute an unfair trade practice :

1. There must be a trade practice (within the meaning of section 2(u) of the Monopolies and Restrictive Trade Practices Act);
2. The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services;
3. The trade practice should fall within the ambit of one or more of the categories enumerated in clauses (1) to (5) of Section 36A;
4. The trade practice should cause loss or injury to the consumers of goods or services;
5. The trade practice under clause (1) should involve making a "statement" whether orally or in writing or by visible representation.

Causation of loss or injury thus is a sine qua non for invoking the principles of Section 36A of the M.R.T.P. Act. The Commission, in our considered opinion, committed a manifest error in holding that the actual loss or injury is not an essential ingredient of the unfair trade practice.

It is now a well-settled principle of law that a literal meaning should be assigned to a statute unless the same leads to anomaly or absurdity. The terminology used in the provisions is absolutely clear and unambiguous. As noticed hereinbefore, in terms of the aforementioned provisions not only a trade practice is resorted to for the purpose of promoting sale or use or supply of any goods or services, as specified therein but thereby loss or injury to the consumers of such goods or services must be caused. The word 'thereby' must be assigned its plain meaning for interpretation of the aforementioned provision.

In H.M.M. Ltd's case (supra), this Court has clearly held that for holding a trade practice to be an unfair trade practice, it must be found that it had caused loss or injury to the consumer.

We may notice that on or about 1993 an amendment has been made whereby the words "causing loss or injury to the consumer" were omitted which also goes to show the law as it stood thence, 'loss or injury to the consumer' was a pre-requisite for attracting the provisions of Section 36A(3)(b) of the Act.

In interpreting the said provision, the 'Mischief Rule' should be resorted to.

For the view, we have taken, the impugned judgments cannot be sustained, which are set aside accordingly. The appeals are allowed but in the facts and circumstances of the case, there will be no order as to costs.