

ITEM NO.10

COURT NO.11

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) NO. 645/2022

INDIAN MEDICAL ASSOCIATION & ANR.

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

(IA No. 78328/2024 - APPLICATION FOR PERMISSION
IA No. 77726/2024 - APPLICATION FOR PERMISSION
IA No. 130554/2022 - CLARIFICATION/DIRECTION
IA No. 86162/2024 - EXEMPTION FROM FILING ANNEXTURES
IA No. 16915/2023 - EXEMPTION FROM FILING O.T.
IA No. 78630/2024 - EXEMPTION FROM FILING O.T.
IA No. 13659/2023 - INTERVENTION APPLICATION)

Date : 23-04-2024 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. P.S. Patwalia, Sr. Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Priyanshu Tyagi, Adv.
Mr. Rishav Rai, Adv.
Mr. Amarjeet Singh, AOR

For Respondent(s) Mr. K M Nataraj, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Sharath Nambiar, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Rajat Nair, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Shashank Bajpai, Adv.
Mr. Ishaan Sharma, Adv.

Ms. Avni Singh, Adv.
Mr. Jitin Chaturvedi, AOR

Mr. K.M Nataraj, A.S.G.
Mr. Sharath Nambiar, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Rajat Nair, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Shashank Bajpai, Adv.
Mrs. Priya Mishra, Adv.

Mr. Amrish Kumar, AOR

**Mr. Mukul Rohatgi, Sr. Adv.
Mr. Vipin Sanghi, Sr. Adv.
Mr. Balbir Singh, Sr. Adv.
Mr. Arvind Nayar, Sr. Adv.
Mr. Simranjeet Singh, Adv.
Mr. Gautam Talukdar, AOR
Mr. Raushal Kumar, Adv.
Ms. Apurbaa Dutta, Adv.
Ms. Neha Gupta, Adv.
Ms. Smita Jain, Adv.
Mr. Karan Jain, Adv.
Mr. Rishabh Pant, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Rohit Gandhi, Adv.
Mr. Naman Tandon, Adv.
Mr. Hargun Singh Kalra, Adv.
Mr. Akshay Joshi, Adv.
Mr. Rahul Kumar, Adv.
Mr. Sagar Roy, Adv.
Mr. Manoj Kumar Chowdhary, Adv.**

**Ms. Vanshaja Shukla, AOR
Ms. Ankeeta Appanna, Adv.
Mr. Siddhant Yadav, Adv.**

**Ms. Mrinmoi Chatterjee, AOR
Mr. Amarjit Singh Bedi, AOR**

**UPON hearing the counsel the court made the following
O R D E R**

1. Mr. Mukul Rohatgi, learned Senior counsel appearing for the proposed contemnors submits that some advertisements tendering unqualified apologies have been published in the press by the proposed contemnors for the lapses on their part, only yesterday. It is submitted that the same have been collated and shall be filed during the course of the day with copies furnished to learned counsel for the parties.
2. Needful shall be done within two days.
3. It is further stated that additional advertisements shall be published by the proposed contemnors tendering an unqualified apology for the lapses on their part

within this week. As and when the said advertisements are issued and copies filed, the same shall be considered and appropriate orders passed.

4. List on 30th April, 2024, at the top of the Board. The proposed contemnors shall continue to remain present on the next date of hearing.

5. We are of the opinion that the issue relating to implementation of the relevant provisions of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Rules, Drugs and Cosmetics Act, 1940 and the Rules and the Consumers Protection Act, 1986 and the Rules, need a closer examination in the light of the grievances raised by the petitioner-Association, not just limited to the respondents before this Court, but to all similarly placed FMCGs/Pharmaceutical Companies who have been issuing misleading advertisements relating to the products manufactured and marketed by them and taking the public at large for a ride, in particular, adversely affecting the health and well-being of babies, young children, women (including lactating and pregnant women), senior citizens and the sick and infirm, who have been consuming the products on the basis of the said misrepresentations.

6. Further, Union of India is called upon to explain the letter dated 29th August, 2023 issued by the Under Secretary, Ministry of AYUSH, Government of India addressed to all States/UT Licensing Authorities and Drug Controllers of AYUSH informing them that the Ayurvedic Siddha and Unani Drugs Technical Advisory Board (ASUDTAB) in its meeting held on 25th May, 2023, has recommended to proceed with the final Notification omitting Rule 170 of the Drugs and Cosmetics Rules, 1945 and its related provisions and in the meantime, all authorities have been directed not to

initiate/take any action under Rule 170. Notably, in all this duration, the said Rule has not been deleted and at the same time, it is not being enforced on the strength of the aforesaid letter.

7. Having regard to the number of misleading advertisements being published/displayed with little/nil accountability on the part of the manufacturers, promoters as also the press/electronic media, besides the Ministry of AYUSH, it is considered necessary to implead the Ministry of Consumer Affairs, Ministry of Food and Public Distribution, Ministry of Information and Broadcasting and the Ministry of Electronics and Information Technology to examine the steps taken by each of the aforesaid Ministries to prevent the abuse of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Rules, the Drug and Cosmetics Act, 1940 and the Consumer Protection Act, 1986. All the State Governments/UT Licensing Authorities being necessary and proper parties shall also be impleaded as co-respondents in the present petition.

8. Mr. K.M. Nataraj, learned Additional Solicitor General who is appearing virtually, states that his briefing counsel is accepting notice on behalf of all the Ministries referred to hereinabove. The said Ministries shall file their respective affidavits explaining the action taken by them to prevent misuse/abuse of the aforesaid statutes along with the relevant data from the year 2018 onwards and the action taken on receiving such complaints either on the Grievances Against Misleading Advertisements portal (GAMA) or from any other source.

9. Coming to the petitioner-Association, we are of the opinion that the petitioner

also needs to put its house in order. There are several complaints relating to the alleged unethical acts on the part of the members of the Association who are abusing the trust reposed in them by patients and not only prescribing prohibitively expensive medicines, but also recommending avoidable/unnecessary investigations as a part of the line of treatment, for purely extraneous considerations.

10. It is therefore deemed appropriate to direct impleadment of the National Medical Commission as a co-respondent for effective assistance of the Court. The petitioner-Association shall take necessary steps to amend the memo of parties in terms of the directions issued above and serve the newly impleaded respondents, directly and through the standing counsel of the State Governments/Union Territories at the earliest. Dasti in addition is permitted.

11. List on 07th May, 2024.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Nand Kishor)
Court Master (NSH)