

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

WPIL no. 14/2014

CMA no. 112/2014

Date of Judgment: 11.02.2015

Paras Gupta

v.

Union of India and ors.

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Petitioner(s)	:	Mr. Sunil Sethi, Sr. Advocate with Mr. Ankesh Chandel, Advocate.
For the Respondent(s)	:	Mrs. Sindhu Sharma, ASGI. Mr. Gagan Basotra, Sr. AAG. Mr. R. S. Jamwal, CGSC.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

N. Paul Vasanthakumar, CJ

1. This writ petition, by way of Public Interest Litigation, is filed complaining that there is blatant violation of various provisions of Cable Television Network (Regulations) Act, 1995 and the Rules framed thereunder in the State of Jammu & Kashmir on account of unregulated television contents in the shape of either advertisements for commercial products or programmes.

2. It is the contention of the petitioner that while advertising the products in television, the advertisers persuade the viewers to buy their products by depicting women in an indecent manner, which has the effect of denigrating women, and the said act violates the provisions of the Indecent Representation

of Women Prohibition Act, 1986. It is also the contention of the petitioner that some advertisers and television in promoting their products through the programmes telecast throughout the country, which has the effect of promoting superstition among the general masses dragging them towards magical remedies and magical cure by misleading the public at large in gross violation of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. Since the said Acts have not been made applicable to the State of Jammu & Kashmir, petitioner has prayed to issue a direction to the Government to consider drafting of Laws on the analogy of aforementioned Acts as the purpose before the enactment in other areas used to protect the moral fabric of the society.

3. In the writ petition, the Ministry of Information and Broadcasting, Government of India, New Delhi, filed a counter affidavit stating that though the Cable Television Network Regulation Act, 1995 does not provide for pre-sensorship on any programme or advertisement telecast by private satellite TV Channels, Section 5 of the Act provides that no person shall transmit or re-transmit through a cable service, any programme, unless such programme is in conformity with the prescribed programme code. Similarly, advertisements can be issued only as per the Advertisement Code.

4. During the pendency of the Writ Petition, the Ministry of Information and Broadcasting issued an Office Memorandum on 21.8.2014 stating that the Advertisement Standards Council of India (ASCI) noted certain objectionable advertisements received from Consumer Complaints Council, violating the provisions of the Code for self regulation as well as to the provisions of Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and the same was placed before the IMC for its recommendation and it was ordered that the advertisements which are violative of ASCI cannot be carried on TV channels and recommended to advise all Channels not to telecast the advertisements which are found violative by ASCI. In terms of the said recommendation, an advisory has also been issued to all TV channels.

5. The grievance of the petitioner is that in spite of the said advisory issued by the Ministry of Information and Broadcasting, New Delhi on 21.08.2014 some TV channels are advertising objectionable advertisements. No specific instance has been brought to the notice of this Court by the petitioner after issuance of the said advisory. In fact, when the writ petition came up for hearing on 20.11.2014, the learned counsel appearing for the petitioner submitted that in spite of directions issued by the first respondent to various channels, the advertisements continues unabated, and sought for time to

place on record material/additional affidavit showing that objectionable advertisements are being telecast in spite of issuance of advisory by the first respondent. In spite of such submission, till date no such material is produced before this Court. In such circumstances, this Court cannot go into the issue further. If the petitioner is having any proof for the telecast of objectionable advertisement by any TV channel in spite of the advisory of the first respondent to all TV channels, the petitioner can very well approach the concerned authority, who in turn will take suitable action in accordance with law.

6. Insofar as the prayer of the petitioner seeking direction to consider drafting of Laws by respondents 5 and 6, similar to the Indecent Representation of Women Prohibition Act, 1986, and Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, this Court cannot give any positive direction as drafting of Laws/enacting a law is the prerogative of the Government. However, since the Government is bound to prevent the obscene, defamatory, vulgar, false advertisements, in public interest, a direction is issued to the respondents 5 and 6 to consider about the drafting of appropriate Laws, which would definitely protect the interest of the womenfolk and general public from acting on the basis of the false advertisements.

7. With the above observation and liberty to the petitioner as well as respondents 5 and 6, this writ petition is disposed of.

8. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
11.02.2015
Anil Raina, Secy