

ITEM NO.5

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.

PETITIONERS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

(TO BE TAKEN UP AS FIRST ITEM.)

(IA No. 130554/2022 - CLARIFICATION/DIRECTION, IA No. 16915/2023 - EXEMPTION FROM FILING O.T., IA No. 13659/2023 - INTERVENTION APPLICATION, IA 81066/2024 - IMPLEADMENT AS PETITIONER

Date : 10-04-2024 This matter 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. Amarjeet Singh, AOR
Mr. Rishav Rai, Adv.
Mr. Dipanshu Krishan, Adv.
Mr. Deveshi Chand, Adv.

For Respondent(s)

Mr. Tushar Mehta, Solicitor General
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. Tushar Mehta, Solicitor General

Mr. K.M Nataraj, A.S.G.
Mr. Amrish Kumar, AOR

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. 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. Smita Jain, Adv.
Ms. Neha Gupta, Adv.
Mr. Karan Jain, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Rohit Gandhi, Adv.
Mr. Naman Tandon, Adv.
Mr. Hargun Singh Kalra, Adv.
Mr. Akshay Joshi, Adv.
Mr. Rishabh Pant, Adv.

Mr. Dhruv Mehta, Sr. Adv.
Ms. Vanshaja Shukla, AOR
Ms. Ankeeta Appanna, Adv.
Mr. Shyam Agrawal, Adv.
Mr. Siddhant Yadav, Adv.

Mr. Prashant Kumar, Adv.
Mr. Amarjit Singh Bedi, AOR
Mr. Abhijeet Arvind, Adv.
Mr. Amulya Dhingra, Adv.
Mr. Varun Chandiok, Adv.
Ms. Riya Seth, Adv.
Ms. Sweta Prashar, Adv.
Mr. Aditya Kumar Rathi, Adv.

Ms. Mrinmoi Chatterjee, 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 respondents No. 5, 6 and 7, proposed contemnors, submits that subsequent to filing affidavits dated 02nd April, 2024, submitting qualified apologies to this Court for issuing misleading advertisements and releasing press statements contrary to the orders passed on 21st November, 2023 and the undertakings given to this Court, the proposed contemnors have filed fresh affidavits on 06th April, 2024, tendering their unconditional apologies for the lapses on their part and they have sought pardon for the breach of statements made by them.

2. Having regard to the entire history of the matter and the past conduct of the respondents No. 5 to 7 – proposed contemnors, we have expressed our reservation about accepting the apologies offered in the latest affidavits filed by them. We have also pointed out to learned counsel appearing for the proposed contemnors that even after notices to show cause were issued to the respondents-proposed contemnors and they were directed to remain present before this Court, they attempted to wriggle out by moving applications seeking exemption from appearing on the pretext that they were travelling abroad. To demonstrate the said fact,

in the affidavits filed by them alongwith the exemption applications on 30th March, 2024, they annexed tickets purportedly purchased by their travel agents for purposes of travelling abroad. Strangely enough, the said documents were issued the day after the aforesaid affidavits were sworn by them, i.e. on 31st March, 2024.

3. When confronted with the said position on the last date of hearing, learned Senior counsel appearing for the respondents No. 5 and 7 – proposed contemnors had sought time to obtain clarifications. It has now been stated in the latest affidavits filed by the proposed-contemnors that admittedly, photocopies of the tickets were issued on a date after the affidavits were sworn and the said documents were annexed with the affidavits that were sworn on 30th March, 2024 and filed on 31st March, 2024. Fact remains that on the date when the affidavits were sworn, there were no such tickets issued. It is apparent that the respondents were trying to escape appearing personally before this Court in these proceedings, which is most unacceptable.

4. Pursuant to the last date of hearing, the State Licencing Authority has also filed a detailed affidavit running into 27 pages attempting to explain the action taken by the Authority on the basis of correspondence exchanged with the Central Government regarding the objectionable advertisements of Ayush products manufactured by Divya Pharmacy. We

have gone through the said affidavit and several annexures enclosed therewith and are appalled to note that except for pushing the files, the State Licencing Authority has done nothing of any consequence. All that the correspondence between the Union of India and the State Licencing Authority reflects is a clear attempt on the part of the State Licencing Authority to pass on the buck and somehow delay the matter, despite the fact that it was in the year 2018 that the State Licencing Authority was informed for the first time about the misleading advertisements being issued by the contemnors. Over all these years, the State Licencing Authority has continued to remain in deep slumber.

5. Today, Mr. Dhruv Mehta, learned Senior counsel appearing for the State Licencing Authority seeks to explain that the officer who has sworn the affidavit and is holding the post of Joint Director, State Licencing Authority had taken over only in June, 2023. In our opinion, nine months ought to have been sufficient time for the Licencing Authority to have acted in accordance with law. It appears that the predecessor of the present Joint Director, State Licencing Authority is equally complicit in the light of his gross inaction during his tenure of three years on the same post.

6. It is deemed appropriate to direct Dr. Girish Chandra Jangpangi, the predecessor of the present Licencing Authority to file an affidavit

explaining the inaction on his part despite repeatedly been informed about the misleading advertisements being issued by Divya Pharmacy that contravened the provisions of the Drug and Magic Remedies Act and Rules.

7. The disdain shown by Divya Pharmacy to the repeated notices to show cause issued to it by the State Licencing Authority is apparent from the tone and tenor of their reply dated 20th March, 2023, wherein it was stated that the content of the advertisements issued is "*suggestive in nature and it is a choice of treatment in the management of diseases*". Further, that "*the purposes of the advertisement published by the undersigned is to keep people connected with the Ayurvedic medicines which is completely in good faith*". In the teeth of the said reply, instead of taking appropriate action as contemplated under the statute, the State Licencing Authority turned a blind eye and informed the Union of India that it has issued a warning to the concerned Firm and further action against the Firm would be subject to the decision of the Hon'ble Supreme Court. This is to say that if this Court would not have stepped in, the State Licencing Authority would have continued to abdicate its duties under the statute and await orders of this Court for implementation of the Drug and Magic Remedies Act.

8. Though we are inclined to issue notices of contempt to the

deponent of the present affidavit as also his predecessor, we are refraining from doing so for the present. It is deemed appropriate to direct Dr. Girish Chandra Jangpangi, the predecessor of Dr. Mithilesh Kumar, the present Joint Director, State Licencing Authority, Uttarakhand, to file an affidavit explaining the inaction on his part for the entire tenure of his posting as the State Licencing Authority, Uttarakhand. All the officers holding the post of District Ayurvedic and Unani Officer, Haridwar, Uttarakhand, for the period from 2018 till date shall also file their respective affidavits explaining the inaction on their part. The said affidavits shall be filed within three weeks. List on 30th April, 2024, to await the said affidavits.

9. The matter relating to the respondents No.5 to 7 – proposed contemnors shall be taken up on 16th April, 2024. They shall remain present on the said date.

I.A. NO. 81066/2024

1. This application has been filed by one Mr. Jaideep Bihani praying *inter alia* for imleadment in the present matter as a petitioner and for impleading an Institution and some third parties on a plea that his mother was given improper treatment due to which she had expired in the year 2019.

2. We see no reason to entertain the present application, which in our

opinion, is frivolous and has been filed only to distract the court from the main matter.

3. The application is dismissed with costs of ₹10,000/- to be deposited with the Supreme Court Advocates on Record Welfare Association within one week from today. Proof of deposit shall be filed within the same timeline.

(POOJA SHARMA)
COURT MASTER (SH)

(NAND KISHOR)
COURT MASTER (NSH)