

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Writ Petition No.14209 OF 2016

Between:

Mrs. Megha More.

... Petitioner

And

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and another.

... Respondents

And

Writ Petition No.11186 OF 2016

Between:

M/s.Trueweight Wellness Private Limited
and another.

...Petitioners

And

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.11.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | |
|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

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% Dated 20.11.2023

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! Counsel for the Petitioners: Smt.Chandala Devi and M.Abhinay Reddy

^ Counsel for the Respondents: Government Pleader for Medical & Health

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**WRIT PETITION NOS.14209 AND 11186 OF 2016****COMMON ORDER:**

1. Writ Petition No.11186 of 2016 is filed by petitioners/A1 and A2 and Writ Petition No.14209 of 2016 is filed by petitioner/A3 to quash the proceedings against them in C.C.NO.1933 of 2015 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The case is filed under Section 3(d) and Section 7, r/w Serial No.9, 26 & 47 in schedule appended to Drugs and Magic Remedies (Objections Advertisement) Act, 1954 (for short 'the Act'). Since the petitioners are shown as accused in the same case, they are being heard together and disposed off by way of this Common Order.

2. According to the 2nd respondent/Drug Inspector, on credible information, the Drug Inspector along with other personnel on 05.06.2015 inspected the premises of True Weight Wellness Private Limited and found certain products for marketing and distribution. L.W.1 inspected the firm and identified 5 products which were labeled in contravention of provisions of Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954.

i) 'Three grain Upma', labeled as combination of whole grain oats, semolina rice flakes and vegetables makes this product very good source of protein, fiber and complex carbohydrate and it is also rich in B-Glucan a special type of fiber which is very beneficial for lowering cholesterol and heart diseases.

ii) 'True weight wheat grass' labeled as that it is powerful detoxifier and liver and blood protector. It increases red blood cell count and lowers blood pressure. It cleanses the blood, organs and gastrointestinal tract of debris. It stimulates the thyroid gland correcting obesity and indigestion. It provides chlorophyll, aminoacids, minerals, vitamins and enzymes.

3) 'True weight super fiber' labeled as super fiber is a perfect combination of soluble and insoluble fiber sources which increases metabolic rate. It is also beneficial in treating diabetes and high cholesterol and weight loss.

4) 'True weight' tea tox labeled as boost metabolism perfects detox for your body. Aids in weight loss.

5) 'True weight super juice' is labeled as super juice; it is manufactured based on age old remedy, which is beneficial for your health and weight loss.

3. In all the above products, the words used were found to be misleading in nature and would influence the patient for self medication. According to the Drug Inspector, the claims made by the manufacturer as stated above were in violation of the provisions of the Act of 1954, punishable under Section 7 of the Act.

4. The definitions under the Act are:

(a) advertisement" includes any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke;

(b) drug includes— (i) a medicine for the internal or external use of human beings or animals;

(ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

(iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;

(iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii);

(c) 'magic remedy' includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals;

5. Learned counsel for the petitioners submits that since it is not claimed on the label of the items that it is a remedy or cure for any disease and that it was a drug, the provisions of the Act do not apply.

6. On the other hand, learned Government Pleader for Medical and Health appearing for the respondents would submit that it is

mentioned on the label that it is for diabetes heart diseases and obesity, which in itself is an advertisement for curing the said diseases. As such, the claims and using the words diabetes, heart disease and obesity on the labels was misleading and influence a person for self-medication. In the consequence of such consumption, public may have adverse affect on their health, whoever consumes the products believing the false claims made.

7. All the labels of the products seized are filed before the Court. As seen from the labels, it is no where claimed on the label that it is a 'medicine' or a 'drug' for treatment or in any manner would cure any disease. In fact, the products are certified by *fssai* (Food Safety and Standards Authority of India). Food Safety and Standards Authority of India is an authority to provide FSSAI license to every food business and made compulsory to have a food license before initiating the business. FSSAI license serves as a certification that food business complies with food safety regulations set by FSSAI. All Food business operators including pharmacies or medical stores selling Health supplements or Nutraceutical products need to apply for the FSSAI license or registration.

8. Standards for Health supplements and Nutraceuticals are specified under *Food Safety and Standards (Health Supplements,*

Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food, and Novel Food) Regulations, 2016; These regulations cover eight categories of Functional foods, namely, Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Specialty food containing plant or botanicals, Foods containing Probiotics, Foods containing Prebiotics and Novel Foods.

9. It is not the case of the complainant Drug Inspector that the products fall within the definition of a Drug. The complaint was not filed for any penal consequences under the Drugs and Cosmetics Act.

10. Under, The Food Safety and Standards Act, 2006, the Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis. After following the procedure, prosecution can be launched at the instance of Commissioner of Food Safety.

11. The provisions of the Magic Remedies Act would apply if the article or the substance sought to be sold, falls within the definition of drug, but will not include any food item, which is apparent from Section 2(b)(iii) of the Act.

12. It is not mentioned on the label that the item sold is any kind of drug which would treat any disease. Admittedly, the products are Upma, wheat grass, super fiber, tea tox and super juice. The said food items will not fall within the definition of drug. A perusal of the labels does not in any manner make any false claim of treating any disease as a drug. However, a mention is made that the food items are beneficial for health and ailments. It claims that the food items would increase metabolic rate and beneficial for the persons suffering from diabetes, high cholesterol and also would result in loss of weight.

13. The label, as already stated does not advertise or relate to any cures of diseases. The Act is intended to prohibit any claims of magic remedies, for which reason, restrictions are put on the advertisement.

14. In view of this Court's finding that the product sold does not fall within the definition of drug and was sold as a food item certified by *fssai*, the provisions of the Magic Remedies Act of 1954 do not apply. Prosecution if any can be launched by the Food inspector, since the products were sold as 'food'.

15. In the result, the proceedings against the petitioners/A1 to A3 in C.C.NO.1933 of 2015 on the file of III Additional Chief

Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

16. Accordingly, both the Writ Petitions are allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 20.11.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

WRIT PETITION NOS.14209 AND 11186 OF 2016

Dt. 20.11.2023

kvs