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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 4 October 2023***  
***Pronounced on: 10 October 2023***

+ CS(OS) 582/2023

TATA SONS PRIVATE LIMITED & ANR. .... Plaintiffs  
Through: Dr. Abhishek Manu Singhvi and  
Mr. Rajiv Nayar, Sr. Advocates with Mr.  
Pravin Anand, Mr. Achuthan Sreekumar, Mr.  
Zafeer Ahmed, Mr. Rohit Bansal and Ms.  
Apoorva Prasad R., Advs.

versus

PURO WELLNESS PRIVATE LIMITED & ANR . Defendants  
Through: Mr. Akhil Sibal, Sr. Advocate  
with Mr. Nishad Nadkarni, Mr. Ankur  
Sangal, Mr. Raghu Vinayak Sinha, Ms.  
Khushboo Jhunjhunwala, Mr. Shaurya  
Pandey, Ms. Asavari Jain and Ms. Jaanvi  
Chopra, Advs. for Defendant 1

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

### **J U D G M E N T**

#### **IA 18226/2023 (Order XXXIX Rules 1 and 2 of the CPC)**

1. The plaintiffs, Tata Sons Pvt. Ltd. and Tata Consumer Products Ltd. (collectively “Tata”) are aggrieved by a commercial aired by Defendant 1, Puro Wellness Pvt. Ltd. (“Puro”), of its product “Puro Healthy Salt”, which is essentially rock salt and is pink in colour. Tata perceives the commercial to be disparaging white salt in general. As a major player in the white salt market, Tata seeks an injunction against Puro from continuing to air the offending commercial.







2. For no legitimate reason, Tata has also impleaded Ms. Keerthy Suresh, an actress who intones the words, in the commercial, which Tata finds so offensive, as the second defendant. Ms. Suresh has merely provided her professional services to Puro, and I see no justification for involving her in this litigation. Mr. Pravin Anand, very fairly, agreed to her deletion from the array of parties. Accordingly, Ms. Suresh stands deleted from the array of parties. Tata is directed to place on record an amended memo of parties within a week.


3. The storyboard of the offending commercial is as under:

<p><b>Puro Healthy Salt – Kitchen</b></p> <p>Ms Suresh: Placing Puro Healthy Salt on the table</p>	
<p>Lady 2: <i>Arre, Ghar me safed namak toh hai, phir Puro Kyu?</i> (There is white salt in the house, then why Puro?)</p>	
<p>Ms Suresh: <i>Kyunki Puro Healthy hai</i> (Because Puro is healthy)</p>	



<p>Ms Suresh: <i>Healthy? Kaise?</i> (Healthy? How?)</p>	
<p>Ms Suresh: <i>Puro ko bleach karke safed nahi kiya jaata</i> (Puro is not whitened by bleaching.)</p> <p>Lady 2: <i>Accha</i> (OK)</p> <p><u>Statement appearing on screen:</u> <i>Puro Healthy Salt is 100% natural, unrefined, and does not contain any additives, anti-caking agents, chemical preservatives, coloring/bleaching agents of any kind.</i></p>	
<p>Ms Suresh: <i>Free Flowing banane ke liye, chemicals nahin milaya jaate</i> (Chemicals are not added to make it free flowing.)</p> <p><u>Statement appearing on screen:</u> <i>Puro Healthy Salt is 100% natural, unrefined, and does not contain any additives, anti-caking agents, chemical preservatives, coloring/bleaching agents of any kind.</i></p>	
<p>Ms Suresh: <i>Aur Puro Mein hai kudrati Iodine, upar se nahi milaya jaata.</i> (And Puro contains natural iodine, it is not added separately to it)</p> <p><u>Statement appearing on</u></p>	



<p><u>screen</u>: Puro Healthy Salt is 100% natural, unrefined, and does not contain any additives, anti-caking agents, chemical preservatives, coloring/bleaching agents of any kind.</p>	
<p>Lady 2: Superb</p>	
<p>Narrator: Puro Healthy Salt</p>	
<p>Lady 2: <i>Hamare Ghar toh Puro aagaya</i> (Puro has come to our house)</p> <p>Ms Suresh: <i>Kya aap ke ghar aaya?</i> (Has it come to your house?)</p>	

4. This suit was taken up for preliminary hearing by this bench on 26 September 2023. Summons were issued in the suit and notice was issued in IA 18226/2023. Given the nature of the dispute, Puro was directed to file a reply to the present application on or before 2 October 2023. Learned Counsel for Tata waived the requirement of a rejoinder to the proposed reply of Puro, for the purposes of hearing and disposal of the present application.

5. As directed, Puro has filed a reply to the present application. Dr. Singhvi advanced arguments on behalf of Tata, to which Mr. Akhil



Sibal, learned Senior Counsel for Puro, responded. Mid-response by Mr. Sibal, Tata sought to place on record a rejoinder with additional documents. Serious exception was taken by Mr. Sibal, drawing attention to the fact that Tata had, on 26 September 2023, waived its right to file a rejoinder in the present application. In any case, submitted Mr. Sibal, filing of a rejoinder, mid-submissions by the defendant, was unknown. In case Tata desired to introduce a rejoinder in such a fashion, he submitted that he was entitled to go through the rejoinder and modify or advance his further submissions accordingly. Mr. Pravin Anand, thereupon, agreed not to press the submissions in rejoinder, or rely on the documents filed with the rejoinder, for the purposes of the present application. Arguments continued on the said understanding. Submissions in rejoinder were advanced, on behalf of Tata, by Dr. Singhvi and Mr. Rajiv Nayar, learned Senior Counsels and Mr. Pravin Anand.

## **Rival Submissions**

### Opening submissions by Dr. Singhvi

6. Tata's objections to the impugned commercial, as articulated by Dr. Abhishek Manu Singhvi, learned Senior Counsel, are as follows:

- (i) Regulation 4(7)<sup>1</sup> of the Food Safety and Standards (Advertising and Claims) Regulations, 2018 ("the Food Safety Regulations") do not permit Puro to advertise its salt as

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<sup>1</sup> (7) Where the meaning of a trademark, brand name or fancy name containing activities such as "natural", "fresh", "pure", "original", "traditional", "authentic", "genuine", "real", etc., appearing in the labelling, presentation or advertising of a food is such that it is likely to mislead consumer as to the nature of the food, in such cases a disclaimer not less than 3 mm size shall be given appropriate place on the label stating that –  
"This is only a brand name or trademark and does not represent its true nature".



“healthy”. They require that if, in advertising a product, words such as “natural”, “fresh”, “pure”, “original”, “traditional”, “authentic”, “genuine” or “real” are used in such a way as to mislead the consumer regarding the nature of the product, a disclaimer would also be entered on the reverse of the pack, stating that the expression concerned was merely being used as a brand name or trade mark, and did not represent the true nature or characteristic of the product.

(ii) Equally, the description of any food item as “healthy” stands proscribed by Regulation 8(3)<sup>2</sup> of the Food Safety Regulations.

(iii) The impression conveyed by the impugned commercial, when seen as a whole, is that all white salt, including the plaintiffs’ TATA Salt, is unhealthy. The commercial clearly showed the defendant’s Puro salt alongside white salt, thereby disparaging all white salt in general.

(iv) The impugned commercial also conveyed a misleading impression that all white salt, including TATA Salt, was bleached using hazardous chemicals. This is entirely false. Salt is never bleached. Bleaching is a technical process, involving oxidation through agents such as chlorine or hydrogen peroxide, none of which is used in the production of white salt, least of all by Tata.

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<sup>2</sup> (3) Foods shall not be described as “healthy” or be represented in a manner that implies that a food in and of itself will impart health.





(v) The impugned commercial states that Puro does not add chemicals to its salt to make it free flowing. The implication is that white salt manufacturers, including Tata, do so. This is bound to instill a feeling of apprehension and fear in consumers, who would believe that consuming white salt would entail ingestion of harmful chemicals. The Food Safety and Standard (Food Products Standard and Food Additives) Regulations, 2011 (“the FSSAI Regulations”), in fact, permit addition of prescribed quantities of anti-caking agent, to make the salt free flowing.

(vi) The assertion, in the impugned commercial, that Puro salt contains natural iodine and that no extraneous iodine was added to it, also conveys a misleading impression. The FSSAI Regulations require iodisation of white salt. Other salts, such as black salt and rock salt need not be iodised. Iodisation is, therefore, mandatory, and does not render the white salt harmful or unhealthy in any manner. Iodisation is necessary to avoid disorders arising out of iodine-deficiency, such as goitre.

(vii) Though the impugned commercial does not specifically refer to Tata Salt, Dr. Singhvi submits that, as a player commanding 34% of the white salt market share, the impugned commercial is most injurious to Tata. Tata, therefore, possesses the necessary locus to assail the impugned commercial, as an impermissible example of class disparagement. Puffery, submits Dr. Singhvi, is permissible in advertisement, and puffery also includes, in its sweep, exaggerated claims regarding one’s product. What is impermissible is denigration of another’s



product, especially where such denigration is premised on untrue and misleading statements.

7. Dr. Singhvi prays, therefore, that, pending disposal of the suit, Puro be restrained from continuing to air or broadcast the impugned commercial.

Submissions by Mr. Akhil Sibal in reply

8. Mr. Akhil Sibal, learned Senior Counsel for Puro submits, in response, thus:

(i) Tata, too, manufactures and sells its own brand of “Himalayan Pink Salt”, in which the attributes of its product are described in precisely the same terms in which Puro describes its product in the impugned commercial. What is sauce for the goose, therefore, is sauce for the gander.

(ii) This fact has been concealed in the suit. Tata has, thereby, rendered itself ineligible to any equitable interlocutory relief. In fact, the stand taken by Tata is, in a sense, hypocritical.

(iii) (Apropos an intervention, at this point, by Mr. Pravin Anand, to the effect that the statement on the package of Himalayan Pink Salt was made by Big Basket, to whom Tata has issued a legal notice, though merely a day earlier) Issuance of a notice to Big Basket, at this point, is clearly an afterthought. Moreover, Tata having foregone, on 26 September 2023, its right to file rejoinder to Puro’s reply, Puro’s assertions, in the reply to the present application, have to be regarded as admitted. In any





event, issuance of a legal notice at this point can have no consequence, as, by now, Tata must have profited by large-scale sale of its “Himalayan Pink Salt”.

(iv) The parties, between them, have a history. Identical commercials aired by Puro, in which identical comments on Tata’s white salt were made by Puro, formed subject matter of CS (OS) 403/2018 (*Tata Chemicals Ltd v. Puro Wellness Pvt Ltd*). In that case, in fact, there was no insinuation, and the comments were far more direct. In other words, Mr. Sibal submits that what Tata perceives, from the impugned commercial, to be adverse observations regarding white salt, were directly made by Puro in the commercials forming subject matter of CS (OS) 403/2018. By judgment dated 15 March 2019<sup>3</sup>, a learned Single Judge of this Court held the commercials of Puro to be disparaging of white salt and, therefore, enjoined further broadcasting or transmission of the commercials. This decision was, however, reversed by the Division Bench of this Court in its judgment dated 31 October 2019<sup>4</sup> in FAO (OS) 64/2019 (*Puro Wellness Pvt Ltd v. Tata Chemicals Ltd*, hereinafter “*Puro-I*”). Though the said decision is presently under challenge before the Supreme Court, neither has the Supreme Court issued notice, nor passed any interlocutory orders in the SLP. The findings in the judgment of the Division Bench apply, on all fours, to the present dispute. In fact, contends Mr. Sibal, Tata is essentially seeking to re-argue the contentions

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<sup>3</sup> *Tata Chemicals Ltd v. Puro Wellness Pvt Ltd*, 2019 SCC OnLine Del 7605

<sup>4</sup> (2019) 178 DRJ 130 (DB)



which were advanced before the Division Bench, and which failed to find favour with this Court.

(v) Tata's contention that Puro cannot advertise its products as "healthy" is, in fact, in the teeth of the concluding observations in the judgment of the learned Single Judge in CS (OS) 403/2018, which reads thus, and which remained undisturbed by the Division Bench:

"It is however clarified that the Defendant is entitled to promote its own product – Puro Healthy Salt as a salt which is natural and healthy."

(vi) Tata's reliance on Regulation 4(7)<sup>1</sup> of the Food Safety Regulations is misconceived. Puro does not employ any of the expressions noted in the said sub-Regulation. Moreover, Regulation 4(7)<sup>1</sup> applies only where the use of the said expression is likely to mislead consumers as to the nature of the food. No such misleading impression was conveyed by any expression used by Puro in its commercial.

(vii) Regulation 8(3) of the Food Safety Regulations is also being read out of context. The sub-Regulation is not even applicable in the present case, given the circumstances to which Regulation 8<sup>5</sup> itself applies. Puro does not make any claim to

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<sup>5</sup> 8. **Claims related to dietary guidelines or healthy diets.** –

(1) Claims may be made related to a "healthy diet" or any synonymous term referring to the pattern of eating as per current Indian Council of Medical Research Dietary Guidelines for Indians and the label shall carry a statement relating the food to the pattern of eating described thereof.

(2) Foods, which are described as part of a healthy diet, balanced diet shall not be based on selective consideration of one or more aspects of the food and shall also satisfy the criteria for other major nutrients related to the current Indian Council of Medical Research Nutrient Requirements and Recommended Dietary Allowances for Indians and Indian Council of Medical Research Dietary Guidelines for Indians, based on scientific evidence.

(3) Foods shall not be described as "healthy" or be represented in a manner that implies that a food in and of itself will impart health.



dietary guidelines or healthy diets, in which circumstance alone Regulation 8, with its sub-Regulations, would apply.

(viii) There are no express statements of fact, in the impugned commercial, about white salt, much less about Tata's white salt. All express statements of fact are with respect to Puro's product. Mr. Sibal reiterates that this is in stark contradistinction to the commercials which constituted subject matter of CS (OS) 403/2018, which made express adverse comments about white salt, and which, nonetheless, were not found, by the Division Bench, to justify any interlocutory interdiction.

(ix) Rock salt is healthy, and is always promoted as such. Mr. Sibal draws my attention, in this context, to literature issued by the Ministry of Ayush, Government of India, which advises increase in consumption of rock salt and avoiding consumption of white salt, as the former is healthy and the latter unhealthy.

(x) Tata has chosen to allege, against Puro, class disparagement. The standard to be established to succeed in a claim of class disparagement is much higher than in cases where a product is specifically disparaged, as the Court has additionally to satisfy itself that disparagement of the class – assuming it is found to exist – results in disparagement of the plaintiff's product, or in adverse consequences to the plaintiff.

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(4) Flexibility in the wordings is acceptable, if the claims remain faithful to the pattern of eating outlined in the current Indian Council of Medical Research Nutrient Requirements and Recommended Dietary Allowances for Indians and Indian Council of Medical Research Dietary Guidelines for Indians.



(xi) Puro has, in its commercial, merely highlighted positive features of its product which, according to Puro, are relevant. All assertions in the commercial are true. There is no negative statement about Tata's white salt. All that the commercial aims to do is, therefore, to provide information to the consumer about "Puro Healthy Salt", leaving the consumer to make an informed choice.

(xii) The suit is highly belated. The issue being raised by Tata is not new. Puro has, apropos white salt, been making similar assertions in its product commercials, for several years. Mr. Sibal drew the attention of the Court to earlier commercials of "Puro Healthy Salt" which, though they did not particularly compare "Puro Healthy Salt" with white salt, nonetheless contained the following caption at the foot of the commercials, towards their conclusion:

"Puro Healthy Salt is 100% natural, unrefined and does not contain any additives, anti-caking agents, chemical preservatives, colouring/bleaching agents of any kind."

(xiii) The impugned commercial merely conformed to the manner in which rock salt was customarily advertised and promoted. Mr. Sibal invited attention to advertisements for rock salt by various other manufacturers which, he submits, are similar to the impugned commercial. There is no reason, therefore, for Tata to selectively take exception to Puro.

(xiv) Mr. Sibal also invited attention to literature which set out the manner in which white table salt is prepared. According to



Mr. Sibal, consumers have, since long, been deceived into believing that white salt is pure – an impression which draws on the traditional equation of white with purity. In actual fact, submits Mr. Sibal, pure sea salt is not white. It is whitened, to achieve its traditional snow white complexion, after subjecting it to bleaching and extensive treatment which denudes it of useful chemicals and leaves behind sodium chloride.

(xv) Every consumer has a right to be informed of the product that he consumes. So long as the assertions in the impugned commercial are not untrue, they are protected by the right of the consumer to be informed.

(xvi) Tata has erroneously sought to contend that Puro alleged bleaching of salt, by white salt manufacturers, by addition of harmful chemicals. There is no such insinuation in the impugned commercial. Bleaching is merely whitening. However, in the process of whitening and other treatment of sea salt, adverse effects result.

(xvii) Mr. Sibal also placed reliance on a pre-feasibility report with respect to the soda ash project of Tata, particularly to the reference, in the said Report, to the fact that the complex consists of various plants, including manufacturing of soda ash, sodium bicarbonate, caustic soda-liquid chlorine-hydrochloric acid, bromine, vacuum evaporated salt and clinker/cement. He has drawn attention to other literature, which suggests that soda ash bleaches. From these, Mr. Sibal seeks to draw the conclusion



that, by using soda ash, Tata bleaches sea salt in order to produce its white salt.

(xviii) In any event, Tata can claim not to bleach its salt, but cannot lay any such claim with respect to all other manufacturers of white salt, which admittedly constitute 70% of the market.

(xix) Tata cannot, in any case, contend that Puro is disentitled from using “Healthy” as part of its name, as Puro has registered, in its favour, “Puro Healthy Salt” as a trade mark under the Trade Marks Act, 1999, since 14 June 2018.

(xx) The storyboard of the impugned commercial does not, in any manner, denigrate or disparage white salt, much less white salt produced by Tata. Mr. Sibal took me through the commercial, frame by frame. The response, by Ms. Keerthy Suresh, to the initial query as to why, when white salt was available, Puro was being used, “*Kyunki Puro healthy hai*” cannot be said to be disparaging, in any manner, of white salt. It merely declares that Puro was being used because Puro was healthy. The subsequent declarations, in the commercial, only seek to justify the initial response, by pointing out why Puro is healthy. At the highest, these declarations would amount only to puffery, which is permissible in comparative advertising. This is clear from the fact that, before the various declarations that follow, the other actress queries “*Healthy? Kaise?*” All statements thereafter, therefore, pertained only to Puro, and not to Tata or its white salt.





(xxi) It is not Tata's contention that any of the said representations is false. The attempt of Puro, in the commercial, was not to run down white salt, but to emphasise the fact that the rock salt made and sold by Puro was natural. The commercial was, therefore, "comparison positive", not "comparison negative". Mr. Sibal has sought to analogise the facts in the present case to those which were before me in *Reckitt Benckiser (India) Pvt Ltd v. Wipro Enterprises (P) Ltd*<sup>6</sup> ("*Reckitt v Wipro*", hereinafter).

(xxii) In this context, Mr. Sibal submits that there is no decision in which, in the absence of any direct implication of the plaintiff's product as inferior in any manner, or any direct disparagement of the plaintiff's product, the Court has proceeded to grant an injunction.

(xxiii) Tata, submits Mr. Sibal, is being hypersensitive. The inference, that Tata seeks to draw from the declaration in the impugned commercial that Puro salt is healthy, and that white salt is unhealthy, he submits, does not automatically follow.

(xxiv) Similarly, from the recital, in the impugned commercial, that Puro salt does not contain additives, Tata is seeking, without justification, to infer an allegation that adding additives is dangerous.

(xxv) Referring to the objectionable features of the impugned commercial, as enumerated in para 26 of the plaint, Mr. Sibal

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<sup>6</sup> 2023 SCC OnLine Del 2958



submits that the inferences that (a) “by using the word ‘bleached’, the Defendants are giving an impression that their salt is not processed by the addition of strong and harmful chemicals and by necessary implication, they are trying to convey as if all white salt, including the Plaintiffs’ TATA SALT is run through strong hazardous chemicals for turning the salt white”, “the Defendants are stating that hazardous, strong and harmful chemicals are not added to make their salt free flowing and by necessary implication they are trying to convey that all white salt, including the Plaintiff’s TATA SALT contains hazardous chemicals which are added to make it free flow”, and (c) by claiming that the defendants do not add iodine separately to their product, “by necessary implication, the Defendants are trying to give the impression that all white salt which are mandatorily iodised are bad and unfit for consumption and hazardous”, do not actually flow from what is stated in the impugned commercial. In fact, Tata has even sought to place words in the mouth of Puro, by averring that Puro has, in the impugned commercial, stated “that hazardous, strong and harmful chemicals are not added to make their salt free flow”, whereas no such words have been used by Puro.

**9.** In support of his submissions, Mr. Sibal cited various judicial precedents.



10. From the judgment of the Division Bench of this Court in *Dabur India Ltd v. Colortek Meghalaya Pvt Ltd*<sup>7</sup> (“*Dabur v. Colortek*” hereinafter), he derives the proposition that truth is an absolute defence to a charge of disparagement. He relies, in this context, on paras 13 to 19 of Puro’s reply to the present application, in which it is averred that naturally occurring salt is not snow white, and white salt achieves its white colour not by removing impurities, but by eliminating naturally occurring minerals, carrying health benefits, from sea salt; in this process, additives in the nature of anti-caking agents are added; the white salt which results is merely sodium chloride with added iodine, with no minerals whatsoever; in arriving at this salt from naturally occurring salt, brine is heated, resulting in loss of all naturally present minerals and changes colour to bright white, and anticaking agents and iodine are added externally; the salt is, therefore, actually bleached by a chemical process, and that these facts are vouchsafed by the pre-feasibility report relating to Tata’s Soda Ash, Cement and Captive Co Generation Power Plant. Tata having opted, voluntarily, not to file any rejoinder to these assertions, they had to be treated as admitted.

11. *Dabur India Ltd v. Emami Ltd*<sup>8</sup> (“*Dabur v Emami*” hereinafter) is a case, submits Mr. Sibal, in which there was a far more direct attack than in the present case. The product under attack, by Emami, was “Chyawanprash”. Dabur was not specifically named. Dabur’s contention was that it was the market leader in Chyawanprash and that, therefore, the commercial was in effect an attack by proxy. The message that was sought to be conveyed was that 50% of Chyawanprash was sugar and was, therefore, unhealthy, whereas

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<sup>7</sup> ILR (2010) 4 Del 489

<sup>8</sup> 261 (2019) DLT 474



Emami’s “Chyawanprashad” had no sugar and was, therefore, healthy. Dabur sought to contend that Chyawanprash, as an Ayurvedic preparation, had necessarily to contain sugar. Despite this, submits Mr. Sibal, this Court did not find Emami’s commercial to be disparaging of Dabur’s Chyawanprash. Applying the approach adopted by the Division Bench in the said case would, submits Mr. Sibal, required the Court to, in the present case as well, hold that there is no disparagement.

12. Similar, submits Mr. Sibal, is the position which emerges from the judgments of the Division Bench of this Court in *Colgate Palmolive Co. v. Hindustan Unilever Ltd*<sup>9</sup> (“*Colgate v HUL*” hereinafter, from which Mr. Sibal cites para 27), the judgment of coordinate single benches of this Court in *Marico Ltd v. Dabur India Ltd*<sup>10</sup> (from which Mr. Sibal cites paras 40, 41, 79, 83 to 85 and 87), *Dabur India Ltd v. Colgate Palmolive India Ltd*<sup>11</sup> (“*Dabur v Colgate*” hereinafter) and *Reckitt v. Wipro*<sup>6</sup> (rendered by me), *Karamchand Appliances Pvt Ltd v. Sh. Adhikari Brothers*<sup>12</sup> (from which Mr. Sibal cites paras 4 and 25 to 31), *Dabur India Ltd v. Emami Ltd*<sup>13</sup> (“*Dabur v. Emami-II*”) hereinafter, from which Mr. Sibal cites paras 3, 9 and 10) and the judgment of a Division Bench of the High Court of Bombay in *Gujarat Cooperative Milk Marketing Federation Ltd v. Hindustan Unilever Ltd*<sup>14</sup> (from which Mr. Sibal cites paras 24, 30 and 31).

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<sup>9</sup> 206 (2014) DLT 329 (DB)

<sup>10</sup> 301 (2023) DLT 685

<sup>11</sup> 2004 (77) DRJ 415

<sup>12</sup> (2005) 31 PTC 1

<sup>13</sup> 2004 (75) DRJ 356

<sup>14</sup> 2018 SCC OnLine Bom 7265



13. Ergo, submits Mr. Sibal, there is no merit in the present application, which deserves, therefore, to be dismissed. He prays accordingly.

Submissions of Dr. Singhvi, Mr. Nayar and Mr. Pravin Anand in rejoinder

14. Between them, Dr. Singhvi, Mr. Nayar and Mr. Pravin Anand advanced the following submissions in rejoinder:

(i) The judgment of the Division Bench of this Court in *Puro-I* cannot impact the outcome of the present litigation. In disparagement matters, each commercial is different and each case is distinct. One case cannot act as a precedent for another. Ultimately, in every case, what matters is the “look and feel” of the commercial in dispute.

(ii) Besides, the judgment of the Division Bench in *Puro-I* only reversed the decision of the learned Single Judge apropos the three commercials featuring Mr. Anil Kapoor. Circulation of the pamphlet advertisement, which was also challenged by Tata, was permitted only subject to deletion of the image depicted therein. Besides, when the matter was carried to the Supreme Court, Tata did not prosecute the appeal only because Puro was desirous of settling the matter. It cannot, therefore, be said that the decision of the Division Bench in *Puro-I* operates as a binding precedent.



(iii) Ultimately, as held by the learned Single Judge of this Court in *Dabur v. Emami*<sup>8</sup>, the correct test to apply was the following:

“.....The paramount consideration for the Court to discern disparagement is to go into the heart of the matter and see the impact the impression the advertisements create. This simple aspect should not be made complex. I am not suggesting that Court should take a view instinctively. Of course, in order to decide the question, the Court would have to reflect, enquire and assimilate all the relevant factors, but the crux of the matter is always the intent and effect, that I have described as “look and feel”. The Courts, guided by principles enunciated in judicial precedents, should test the merits of the claims of challenge by evaluation of the message and effect. The comparative advertising campaign should thus be ‘comparison positive’.”

(iv) *Marico*<sup>10</sup> is distinguishable, as the Court, in that case, relied on prior orders passed by the High Court of Bombay and essentially found the plaintiff to be guilty of forum shopping and suppression of fact. If anything, para 77 of the judgment recognises the right of a market leader to sue for class disparagement even if the commercial or advertisement in question did not identify it, by holding that “if a class of goods are disparaged by an advertisement, a leader or person having substantial stake in the generic disparaged goods can maintain an action against the advertisement”.

(v) The “look and feel” of the allegedly disparaging commercial could not be discerned by viewing it frame by frame. What matters is the overall impression that it seeks to convey. The overall impression that Puro’s impugned commercial conveys to the consumer, in the present case, is clearly that white





salt is to be avoided, as it is bleached, contains artificial harmful chemicals and iodine. This, therefore, is not a case of mere puffery but of conscious generic disparagement of white salt.

(vi) Mr. Sibal's contention that the assertions made by Puro in the impugned commercial are truthful is not correct as (a) the white salt made and sold by Tata is not bleached, (b) iodisation is a statutory mandate, whereas the impugned commercial conveys the impression that it is something to be avoided, (c) no preservatives were added in white salt, before it was released in the market, and (d) the only "artificial chemical" which was added was anti-caking agent, which was a permissible additive, to render the salt free-flowing.

(vii) Mr. Sibal's reliance on random literature, to convey the impression that white salt was unhealthy in any manner, was completely misplaced. The opinion expressed in the articles cited by Mr. Sibal were merely opinions, and nothing more.

(viii) Citing paras 19 and 23 of *Dabur v. Colortek*<sup>7</sup>, learned Senior Counsel contend that the present case is one of "clever advertising". Dr. Singhvi carried the point a notch further, by submitting that Mr. Sibal is not correct in his assertion that the impugned commercial does not name Tata's white salt. "Naming" is merely a form of identification. As the market leader in white salt, commanding 30% of the market, with the next player Nirma having a mere 5%, it was clear that the reference to white salt was an indirect allusion to Tata. Tata was, therefore, effectively "named by proxy". The reference to "white



salt” in the impugned commercial could, therefore, be treated as a reference to Tata’s white salt. By resorting to such clever advertising, and indirectly referring to the plaintiff’s product without directly making allusion thereto, it is submitted that Puro cannot escape the consequences of disparagement.

(ix) The reference, by Mr. Sibal, to the soda ash manufacturing facility of Tata is completely off the point. The soda ash manufacturing line is different from the white salt manufacturing line. The paras referenced by Mr. Sibal themselves indicate that the salt that emerges during the production of soda ash is vacuum evaporated salt. It is not sold in the market as such.

(x) Tata does not add any chemicals, and does not bleach the salt before it is sold. Bleaching, per se, involves addition of chemicals. What Tata does is whitening of the sea salt, by vacuum drying and evaporation. No chemicals figure in the process.

(xi) Iodisation of white salt, before it is sold, is mandatory under the applicable Regulations. The impugned commercial seeks to portray iodisation, by adding of iodine, as deleterious to health. This is a completely misleading impression.

(xii) The difference between the impugned commercial in the present case and earlier commercials which may also have targeted white salt is the crucial initial query posed to Ms. Suresh



– “*Phir Puro kyon?*”<sup>15</sup> All that follows thereafter is a response to the query. The attempt to denigrate white salt, generically, it is apparent. Though there is no overt reference, in the impugned commercial, to Tata’s white salt, the attempt at targeting Tata is apparent, as Tata is indisputably the market leader in white salt, commanding 30% of the market.

(xiii) The purpose of the impugned commercial is critical to the issue at hand. In the guise of extolling the virtues of its product, Puro cannot be permitted, in law, to run down, denigrate or disparage white salt as a product in general. This amounts to class disparagement, which the law does not permit. It crosses the legitimate boundaries of comparative advertising.

**15.** Learned Counsel, therefore, reiterated their prayer for a blanket injunction against airing, transmission or broadcasting of the impugned Puro commercial.

## **Analysis**

### Impact of judgment in *Puro-I*





**16.** Mr. Sibal submits that Tata is disentitled to any interim direction, as the issue in controversy stands covered by the judgment dated 31 October 2019, rendered by the Division Bench of this Court in *Puro-I*. That case dealt with three television commercials (TVCs), a flier/pamphlet and a video. The storyboards of the commercials forming subject matter of challenge in CS (OS) 403/2018 are as under:

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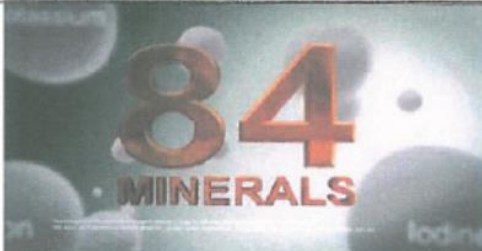
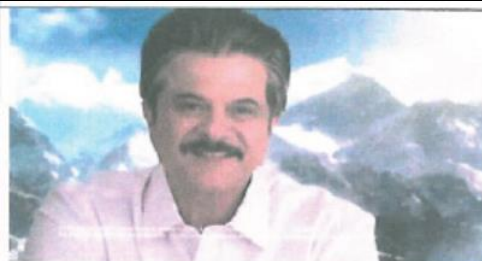
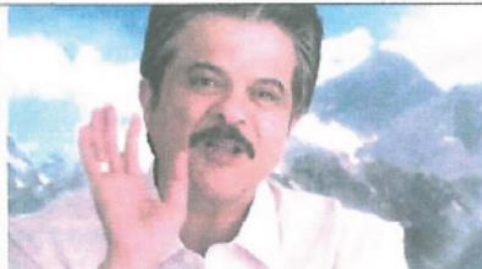
<sup>15</sup> Then why Puro?






**TVC-1**

Voice Overs	Visuals
<p><i>Ye Paint, Chemical factory mein banta hai</i> (This paint is made in a chemical factory)</p>	
<p><i>Aur ye aapka safed namak, Jisse app roz khate hai ye bhi chemical factory mein banta hai!</i> (And this white salt which you consume every day, this is also made in a chemical factory!)</p> <p><i>Bleach kiya jaata hai.</i> (It is bleached.)</p>	
<p>Disclaimers:                      *Refined Iodized White Salt commonly sold in India is chemically produced and is bleached (Verb) to get white color                      –  <a href="http://saltcomindia.gov.in/NIDCCPPProcess.html">http://saltcomindia.gov.in/NIDCCPPProcess.html</a>                      *bleach (VERB) to remove the colour from something or make it lighter –                      Natural color is removed through processing &amp; refining in a chemical factory</p>	
<p><i>Puro Healthy Salt...</i></p>	
<p><i>100% natural...</i></p>	





<p><i>100% Kudrati... (100% Natural)</i></p>	
<p><i>Potassium, Iron aur Iodine</i></p>	
<p><i>Jaise 84 minerals yukt (including similar 84 minerals)</i></p>	
<p><i>Jo aapke liye hai healthy (which is healthy for you)</i></p>	
<p><i>Toh Aaj se khaane ka namak badal daalo. (So change the salt which you eat from today.)</i></p>	
<p>Disclaimers:                  *World Journal of Pharmaceutical Research, Volume 5, Issue 12, 407-416. Review Article ISSN 2277- 7105, HALITE; THE ROCK SALT: ENORMOUS HEALTH BENEFITS – Apurbo Sarker, Arित्रा Ghosh, Kinsuk Sarker, Debojyoti Basu and Prof. Dr. Dhruvo Jyoti Sen.</p>	



<p><i>Puro Healthy Salt</i></p>	
<p><i>Namak Healthy Toh Family Healthy</i> (If the salt is healthy, the family remains healthy.)</p>	
	



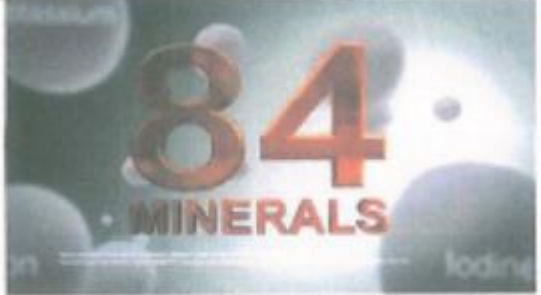

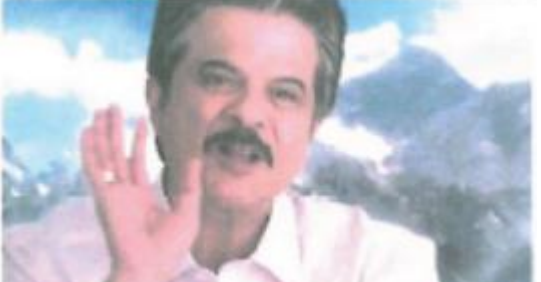
**TVC-2**

VO/SUPERS	VISUALS
<p><i>Yeh Safed kapday, Bleach kiye hue hai</i> (These white clothes are bleached.)</p>	
<p><i>Aur yeh aapke khane ka safed Namak,</i> (And this white salt which you eat)</p>	










<p><i>100% Kudrati ...</i></p>	
<p><i>Potassium, Iron aur Iodine</i></p>	
<p><i>jaise 84 minerals yukt</i></p>	
<p><i>jo aapke liye hai healthy</i></p>	
<p><i>Toh Aaj se khaane ka namak badal daalo.</i></p>	
<p>Disclaimers: *World Journal of Pharmaceutical Research, Volume 5, Issue 12, 407-416. Review Article ISSN 2277-</p>	



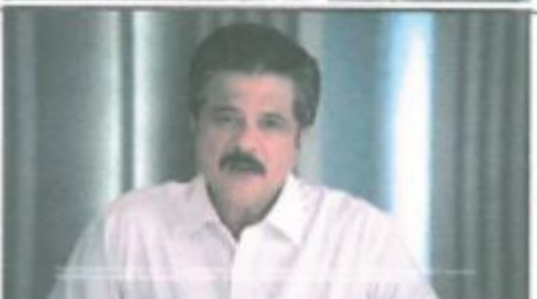




<p>7105, HALITE; THE ROCK SALT: ENORMOUS HEALTH BENEFITS- Apurbo Sarker, Arittra Ghosh, Kinsuk Sarker, Debojyoti Basu and Prof. Dr. Dhrubo Jyoti Sen.</p>	
<p><i>Puro Healthy Salt</i></p>	
<p><i>Namak Healthy Toh Family Healthy</i></p>	
	


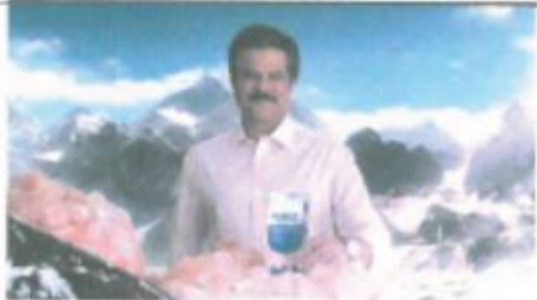



**TVC-3**

VO/SUPERS	VISUALS
<p><i>Khaae mein haldi Kudrati,</i> (Turmeric used in food is natural)</p>	







<p><i>Laal Mirch Kudrati...</i> (Red chilly is natural)</p>	
<p><i>Lekin Kya aap yeh jaante hai ki aapke khane ka safed namak kudrati nahi hai!!!</i> (But do you now that the white salt which you consume is not natural!!)</p>	
<p><i>Chemical factory mein banta hai, bleach hota hai.</i> (It is made in a chemical factory, it is bleached.)</p>	
<p>Disclaimers:          *Refined Iodized White Salt commonly sold in India is chemically produced and is bleached (Verb) to get white color –  <a href="http://saltcomindia.gov.in/NIDCCPProcess.html">http://saltcomindia.gov.in/NIDCCPProcess.html</a>          *bleach (VERB) to remove the colour from something or make it lighter – Natural color is removed through processing &amp; refining in a chemical factory</p>	
<p><i>Isiliye Safed Namak ko karo... Bye Bye...</i></p>	



<p><i>Puro Healthy Salt...</i></p>	
<p><i>100% natural ...</i></p>	
<p><i>100% Kudrati...</i></p>	
<p><i>Potassium, Iron aur Iodine</i></p>	
<p><i>jaise 84 minerals yukt</i></p>	





<p><i>jo aapke liye hai healthy</i></p>	
<p><i>Toh Aaj se khaane ka namak badal daalo.</i></p>	
<p>Disclaimers: *World Journal of Pharmaceutical Research, Volume 5, Issue 12, 407-416. Review Article ISSN 2277-7105, HALITE; THE ROCK SALT: ENORMOUS HEALTH BENEFITS - Apurbo Sarker, Arittra Ghosh, Kinsuk Sarker, Debojyoti Basu and Prof. Dr. Dhrubo Jyoti Sen.</p>	
<p><i>Puro Healthy Salt</i></p>	
<p><i>Namak Healthy Toh Family Healthy</i></p>	





17. The learned Single Judge, in her judgment dated 15 March 2019, held with respect to the TVCs, thus:

“47. A perusal of the impugned material, as a whole, shows that the theme and message is the same in all of them. *The purpose is to clearly convince customers that white salt is dangerous for health. The said message is being conveyed by making references and allusions to TATA Salt. In the video, the TATA Salt packaging is clearly visible.* In the pamphlets and in the booklet, the TATA Salt packaging is blurred, but there is no doubt that the packaging is clearly discernible. TATA Salt is a product which has been sold for several decades and this is a fact of which judicial notice can be taken. It has the requisite approvals and any product which does not comply with the FSSAI statute and regulations, cannot be sold. *A comparison of white salt with poison is clearly meant to create panic amongst the consuming public and if allowed to be carried on unhindered, it can have a deleterious impact not just on the Plaintiff and its product, but also on customers, who could be forced to give up on the use of white salt, which is a basic ingredient in food cooked in almost every household in the country. The portrayal that white salt is bleached, manufactured in a chemical factory and comparable with paint or bleached clothes is not merely puffing but an exaggerated message which could lead to shaking up of customers’ confidence.*

48. The argument of the Defendant that each of the statements in the advertisement is true, may not be wholly correct. The showing of the Plaintiff’s plant, calling it a chemical factory and making wide ranging allegations that hypertension is caused due to consumption of white salt are statements which are made without foundational facts. It is not permissible for any company, to indulge in advertising for its product which would lead to panic amongst consumers. The price difference between the two products is extremely stark. While 1 kg of TATA salt costs ₹20, the Defendant’s salt is sold at ₹99 per



kg i.e. five times the price of the Plaintiff's salt. Thus TATA salt is sold as a product which is consumed by the masses and the Defendant's product is not a substitute or replacement for the same, due to the pricing itself. Further, the comparison is also between two products which are not comparable products. One is iodised salt which is sold as per the FSSAI Regulations. The other is rock salt. The intent of all these commercials and advertisements is to shock the consumers.

49. The submission of Mr. Rajiv Nayar, Ld. Senior counsel appearing on behalf of the Defendant that the three TVCs are common to the present suit and the ISMA suit is correct. However, when the TVCs are seen along with the additional material from the point of view of specifically the Plaintiff's product –TATA salt, the legal and statutory rights that are affected as also the reliefs that can be claimed by the Plaintiff are those that cannot be granted in the ISMA suit. The right of the Plaintiff to protect the good standing of TATA salt as a product and TATA as a brand is a right which cannot be replaced or exercised by ISMA which can only take general action to protect its members including the Plaintiff. The ISMA suit does not usurp the Plaintiff's rights to sue and neither can the said right be replaced by ISMA. It is admitted by the Defendant that the booklet which was circulated contains the contents of the above pamphlet at page 10. The same is however sought to be justified on the basis that it was only circulated to friends and family of the promoter of the Defendant company. The fact that the brochure was of limited circulation at that time does not take away from the contents of the pamphlet, which were clearly disparaging. Even limited circulation constitutes publication.

50. *Mr. Nayar sought to defend all three statements made by the Defendant i.e. that white salt has chemicals, white salt is bleached and white salt is made in a chemical factory, on the ground that the said statements are true. In an action of this nature, what is to be seen is the statutory rights of the Plaintiff, the dominant purpose of the impugned material, the effect of the same and the message sought to be conveyed. It would not be correct to carry out a dissection of each of the statements. The campaign has to be viewed as a whole, and it is to be ascertained whether the same is legally permissible or not. Though the submission of the Plaintiff that the hand waving gesture of 'bye-bye' in the first three commercials is an allusion to 'tata' is rather amusing, at the same time, it cannot be said that the same is wholly innocent.*

51. Ld. counsels have made wide ranging submissions in respect of the chemical processes which are used by both the Plaintiff and the Defendant in the manufacture of salt, and the contents of the same. The Court is merely looking at the advertising campaign as a



whole and the message sought to be conveyed by it. Reference has also been made to the book Salt of the Earth – The Story of TATA Chemicals, which is stated to contain various facts about the manufacture of TATA salt.

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53. *The settled position in law is clear i.e. while puffery is permitted, disparagement and denigration is not.*

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58. *A perusal of the impugned material shows that the intention of the Defendant is not merely to promote its product as a better product, but to call white salt in general, and specifically TATA salt, dangerous, as it is made in a chemical factory and is bleached. It is even compared to poison. As shown by the Plaintiff, use of the anti-caking agent is permissible under the food laws. If a product is manufactured as per the prescribed regulations, terming the same as poison or dangerous or as the cause for several diseases is obviously with an intention not to just promote one's own product but to slander the other product. The clever manner in which the Defendant has completely disowned the viral video, which is completely beneficial only to its own business, clearly shows that the Defendant does not wish to own up to its own acts. A perusal of the video shows several commonalities between the admitted material and the disputed video. The theme in all the impugned material is the same. It is very telling that the markings which appear in the book titled 'Salt of the Earth' as shown in the video in fact appear in the extract of the book filed by the Defendant. In the booklet which the Defendant admits to have circulated, the packaging of the Plaintiff is shown in a blurred form. The conduct of the Defendant has been far from *bona fide*. This Court holds that on the basis of the material available on record, *prima facie* the video has been circulated either by the Defendant or at its behest. The impugned commercials have admittedly not been telecasted since September, 2018. The pamphlet and booklet which were part of the marketing pack was admitted to have been circulated by the Defendant but for limited circulation. *Permitting the Defendant to continue, the telecast/publication of the impugned material would lead to allowing tarnishing and denigration of a product such as TATA salt which is a household name in India. The truthfulness or otherwise of the Defendant's allegations would have to be gone into during trial. But even if it is presumed that the product is made at the Mithapur plant, where one of the by-products of the manufacture of salt from the sea is soda ash, the depiction of the same in the manner in which it is done by the Defendant is wholly unacceptable.**



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61. It is the settled position that even use of a trademark is permissible in comparative advertising, so long as such use is not detrimental to the distinctive character or repute of the mark. The manner in which the TATA salt brand and TATA salt packaging is shown in the video, pamphlet/flyer and booklet and the message sought to be conveyed therein is clearly with an intention to bring disrepute to the brand which would be violative of the rights in the brand itself.

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63. Advertising has to be viewed from the point of view of a lay customer. The protagonist in the television commercial is a well-known actor who is known to the viewing public. The impugned advertising material has been circulated widely. A common man cannot discern the difference between the salt being manufactured in a chemical factory and soda ash being a by-product in the process of manufacture of salt. Such nuanced differences cannot be communicated to the public and the chances of consumers being misled is very high. As it is oft-said “A picture is worth a thousand words”. The TATA brand has earned an iconic status. TATA Salt was introduced by the Plaintiff and was recognised by the Government as one of the products meant to eliminate iodine deficiency. It was promoted as “Desh ka Namak Tata Namak” and has a large customer base. The swathe of population which has consumed and continues to consume a product such as TATA salt cannot be led to believe that they were consuming poison or a dangerous ingredient, without there being irrebuttable proof for the same. Upholding the Defendant’s right to make such statements would mean that the regulatory authorities have turned a blind eye to poison being sold, which is also clearly unacceptable. The truth, if any, of the Defendant’s statements has to be established in trial. Until then, the Defendant cannot be permitted to make such denigratory and disparaging remarks.”

(Italics supplied; underlining in original)

Following these findings, the learned Single Judge injuncted Puro from televising, publishing or circulating the three TVCs, the pamphlet and the video clip. Puro was, however, permitted to promote Puro Healthy Salt as a salt which is natural and healthy.



18. On facts, therefore, the learned Single Judge found that
- (i) the purpose of all the advertisements was to convince customers that white salt is dangerous for health,
  - (ii) the pack held up by Mr. Kapoor in the TVCs was clearly identifiable as the pack of Tata White Salt,
  - (iii) comparison of white salt with poison was clearly meant to create panic amongst consumers and if permitted to continue, would completely disincentivise consumers from using white salt,
  - (iv) the claim that white salt is bleached, manufactured in a chemical factory and comparable with paint or bleached clothes was not merely puffery, but an exaggerated message which could shake customer confidence,
  - (v) the reference to Tata's plant as a chemical factory and the statement that consumption of white salt causes hypertension were not supported by any foundational fact,
  - (vi) the intent of the TVCs was to shock consumers,
  - (vii) the intention of Puro in the TVCs was not merely to promote its product as a better product but to call white salt in general, and Tata salt specifically, dangerous, as it was made in a chemical factory and was bleached,
  - (viii) terming a product which was manufactured as per the prescribed regulations as poison, dangerous or the cause of several diseases clearly amounted to slander, and
  - (ix) the cause of action arose not just when the competing product was referred to by name, packing or other insignia, but even when a general statement was made against a class of products, for which purpose reliance was placed by the learned



Single Judge on *Karamchand Appliances*<sup>12</sup> and *Gujarat Cooperative Milk Marketing Federation*<sup>14</sup>.

**19.** The decision of the learned Single Judge, apropos the three TVCs was, however, reversed by the Division Bench in its judgment in *Puro-I*.

**20.** Insofar as the video clip was concerned, Puro agreed to the clip being injuncted as it completely disowned any connection therewith. Similarly, apropos the flier/pamphlet, Puro undertook to remove the image of the competing product. The Division Bench held that, once the image was removed, Tata's grievance against the flier/pamphlet would stand allayed.

**21.** Thus, the Division Bench did not return any finding on merits regarding either the video clip or the flier/pamphlet. Mr. Nayar's reliance on the fact that the judgment of the Division Bench did not permit circulation of the video clip, and directed removal of the image of the rival product on the flier/pamphlet cannot, therefore, help Tata. In fact, there was no direction to remove any image on the flier/pamphlet. Puro undertook to do so, and the Division Bench merely recorded the fact of the undertaking observing that, once the image was removed, the grievance of Tata with respect to the flier/pamphlet would no longer survive.

**22.** Findings on merits were, therefore, returned by the Division Bench only with respect to the three TVCs, and they are pivotal in deciding the present application. The findings of the Division Bench,





as contained in paras 48 to 50, 52, 53, 54 and 56 to 62 of the report in *Puro-I* may be reproduced thus:

“48. The Court has viewed the three TVCs carefully. The story board of each of the three TVCs has some common elements and distinct elements. The first TVC is the “paint film; the second is “clothes film”; and the third is “haldi film”. The initial few frames/visuals in each of the films contain distinct elements. The remaining frames are identical in the three TVCs.

49. The first frame in the paint film shows Mr. Anil Kapoor holding up a white can with the words “Paint” written on it. In the next frame he is holding a packet which has the words “Safed Namak” written in black. There is no indication that this packet is that of TCL. The words spoken by Mr. Kapoor are “*Ye paint, chemical factory mein banta hai*” and while holding the packet of salt he states “*Aur ye aapka safed namak, Jisse aap roz khate hai ye bhi chemical factory mein banta hai, bleach kiya jaata hai.*”

50. The third frame in the paint film (which is the fourth in the clothes film and fifth in the Haldi film) shows Mr. Kapoor stating “*Isiliye safed namak ko karo...*” and making a waving gesture which in the normal sense would mean “bye-bye”.

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52. The other criticism is that by stating that both paint and white salt are manufactured in a chemical factory, an impression is being created “that production methods of both are similar” and that white salt is “toxic and harmful, like paint”. This again *prima-facie* appears to be an instance of TCL reading too much into the advertisement. TCL does not deny that its salt is manufactured at its chemical factory which produces soda-ash and that the salt is a by-product. TCL also admits that the salt contains an anticaking agent E-536 which is indeed Potassium Ferrocyanide.

53. There appears *prima-facie* to be no suggestion in the paint film that TATA salt is either poisonous or harmful to health. The only suggestion appears to be that the consumer should make an informed choice. On the issue of denigration or disparagement of the TATA salt, at this stage when evidence is yet to be led by the parties, what has to be considered is whether in the paint film, any statement of Mr. Kapoor can be said to be false or misleading or deliberately denigrating TATA salt?

54. As far as the other frames are concerned, which are common to all the three TVCs, they promote the Appellant’s product as being





natural, containing potassium, iron and iodine in the natural form and stating that it is healthy and urging the consumer to choose the Appellant's product. The objection to the word "bleached" and that all white salts are therefore unfit for consumption appears to be based on the alleged disparagement of "an entire class of white salt manufacturers."

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56. As far as the present suit is concerned, the initial burden is on TCL to demonstrate that its product has been specifically targeted by the TVCs. Prima facie it does not appear to have succeeded in doing so. In other words, the Court is not prima facie satisfied that the first TVC deliberately denigrates TCL's TATA Salt. This Court is unable to concur with the learned Single Judge in this regard.

57. Turning now to the second TVC which is the "clothes film", the first visual shows a bundle of white clothes which have been bleached and the packet of white salt which Mr. Kapoor states has been bleached in a chemical factory and which is why it is white. The objection is that this creates an impression that it is "unnatural". These objections overlook the fact that the consumer who is paying Rs.20 for 1 kg of TATA Salt will think several times over if he decides to pay Rs.99 for a kg of the Appellant's Puro-Healthy salt. He should know what the added value of the Appellant's product is, which is the attempt being made in these three TVCs including in the "clothes film".

58. Prima-facie it does not appear that the second TVC i.e. the clothes film specifically targets TATA Salt. There is no image or allusion to TATA Salt in the second TVC. Again, there is the waving gesture but without any words. It *prima-facie* cannot be said to be denigrating TATA Salt in the manner suggested by TCL.

59. The third TVC is the "Spices Film" or the "Haldi Film". The first frame states an obvious fact that it is natural to use "Haldi" and "Lal Mirch" in eating, whereas the salt that is used is made in a chemical factory and is bleached. Here again there is no direct reference to TATA Salt. Following this are the other common visuals which have been referred to earlier beginning with the waving gesture. In the modified TVCs, a waving gesture has been omitted.

60. In the considered view of the Court while it is open to the Appellant to release both the original and the modified TVCs, the waving gesture as such should not be seen as directly alluding to the Respondent's product. This should be seen as a permissible element in a commercial advertisement where every expression could not be



seen to be “false, misleading, unfair or deceptive.” It must been seen as encouraging the consumer to make an informed choice about the product for which the consumer is going to pay much more. The class of the product itself is not comparable. The class of consumers targeted is also different.

61. Learned counsel for the Respondents placed considerable reliance on the observations of the learned Single Judge in para 63 of the impugned judgment. In the absence of the matter having gone to the stage of evidence, the conclusion of the learned Single Judge in para 63 that “the TATA brand has earned iconic status. TATA salt was introduced by the Plaintiff and was recognised by the Government as one of the products meant to eliminate iodine deficiency’, is problematic. Equally problematic is the opinion that “The swathe of population which has consumed and continues to consume a product such as TATA salt cannot be led to believe that they were consuming poison or a dangerous ingredient, without there being irrebuttable proof for the same.” This ought to be qualified by the caveat that this is the Plaintiff’s case which remains to be tested in evidence. The threshold for proving defamation is high. In the present case, it might be higher with the Appellant pleading truth as a defence.

62. In the prima-facie view of this Court, at the present stage when evidence of the parties is yet to be led, it is not possible to come to a conclusion in the manner that the learned Single Judge has, that the three TVCs make a direct reference to TATA Salt and are either disparaging or denigrating of it.”

(Underscoring supplied)

23. When one examines the TVCs forming subject matter of challenge in *Puro-I*, it is seen that

- (i) all the three TVCs were specifically directed at a pack of white salt, similar, if not identical, to the pack of white salt shown in the impugned commercial in the present case,
- (ii) in TVC-1,
  - (a) it was specifically alleged that white salt was bleached in a chemical factory, which was why it was white,



- (b) it was specifically alleged that iodised white salt commonly sold in India was chemically produced,
  - (c) it was specifically alleged that the natural colour of salt was removed through processing and refining in a chemical factory,
  - (d) the viewing consumer was specifically advised to say “bye-bye” to white salt for these reasons,
  - (e) Puro salt was exalted as 100% natural, containing potassium, iron, iodine and 84 minerals, which were healthy,
  - (f) the consumer was specifically advised, therefore, to immediately change the salt which was being used by her, or him, and
  - (g) the TVC concluded with the message that if the salt which was consumed was healthy, the family would also remain healthy,
- (iii) in TVC-2,
- (a) it was specifically alleged that white salt was bleached in a chemical factory, which is why it was white,
  - (b) refined iodised white salt commonly sold in India was chemically bleached, using chemicals, to make it white in colour,
  - (c) the natural colour of salt was removed through processing and refining in a chemical factory,
  - (d) the consumer was specifically advised, for these reasons, to say “bye-bye” to white salt,



- (e) Puro Healthy Salt was 100% natural and contained potassium, iron, iodine and 84 minerals, which were healthy,
- (f) the consumer was specifically advised, therefore, to change the salt which he was using and
- (g) the commercial concluded with the message that a family which consumes healthy salt will remain healthy. and
- (iv) in TVC-3,
- (a) the commercial began with the observation that turmeric and red chilly, which were used in cooking, were natural,
- (b) about white salt, the commercial went on to state that
- (i) it was not natural, however, white salt, which was also used in cooking, was not natural,
- (ii) white salt is made in a chemical factory, and
- (iii) white salt is bleached through processing and refining,
- (c) the consumer was, therefore, advised to say “bye-bye” to white salt,
- (d) Puro salt was 100% natural and contain potassium, iodine and 84 minerals which were healthy,
- (e) the consumer was, therefore, specifically advised to change the salt which he used and
- (f) the commercial concluded with the observation that a family which consumed healthy salt stayed healthy.



24. As against this, in the impugned commercial, what is the narrative? Ms. Suresh places a pack of Puro Healthy Salt on the table. The other lady in the picture (Lady 2) queries of Ms. Suresh as to why, when white salt is available in the house, Puro was being used. Ms. Suresh responds that she was using Puro because it was healthy. Lady 2 queries as to how Puro was healthy. Ms. Suresh responds that Puro was not bleached to make white, no chemicals were added to Puro to make it free flowing and Puro contains natural iodine which was not added to it. Lady 2 responds with the expression “Superb”. The commercial concludes with Lady 2 stating that Puro had come to her house and Ms. Suresh querying as to whether Puro had come to the house of the viewer,

25. There is no dispute about the fact that comparative advertisement – or for that matter, any form of advertisement – allows extolling of one’s own product. The advertisement becomes objectionable only when it makes comments about the product of another. What the Court is to see, in cases where disparagement is alleged, is whether the said comments are objectionable, given the well-settled standards in that regard.

26. When one compares the comments made about white salt in the three TVCs which form subject matter of debate in *Puro-I*, with the comments made about white salt in the presently impugned commercial, it is apparent that the attack on white salt in the *Puro-I* commercials is far more direct and far more extreme than in the impugned commercial. In fact, as Mr. Sibal correctly points out, the impugned commercial does not directly make any comment at all



regarding white salt. As against this, there are direct aspersions in the *Puro-I* TVCs about white salt *per se*. It is specifically alleged, in the *Puro-I* TVCs, that white salt is made in a chemical factory, that it is bleached by removing natural colour through processing and refining. There is a specific exordium, to consumers, to discontinue use of white salt and replace it with Puro Healthy Salt as Puro Healthy Salt is natural and contains minerals which are beneficial to health. The comparison of white salt, in TVC-1 is, in fact, with paint. TVC-3 in *Puro-I* is even more hard hitting, as it directly states that white salt is not a natural product but is a product of processing in a chemical factory, including bleaching using chemicals.

27. When one compares the *Puro-I* TVCs with the impugned commercial, what is immediately apparent is that unlike the TVCs in *Puro-I*, there is no direct reference, in the impugned commercial, to the qualities of white salt at all. As worded, the only reference to white salt is in the initial query posed by Lady 2 to Ms. Suresh. The query is as to why, when white salt is available in the house, Ms. Suresh chooses to use Puro's salt. Prior thereto or thereafter, there is no reference to white salt. What follows thereafter is only the response of Ms. Suresh as to why she is choosing to use Puro's salt. Her response is that Puro's salt is healthy. The explanation that follows is to the subsequent query of Lady 2 as to why Puro's salt is healthy. That query, notably, does not make any reference to white salt. All the comments that follow are, therefore, as Mr. Sibal correctly points out, entirely relatable to Puro's salt, and not to white salt at all.



**28.** Carefully seen, the highest that could be said, therefore, would be that the preference for Puro's salt, even when white salt was available, was because Puro's salt was healthy. It is highly debatable as to whether this can result in an inference that white salt is unhealthy. Even if, assuming it could, a much more direct allusion to white salt, in the very same terms, is available in the three *Puro-I* TVCs.

**29.** The comments of Ms. Suresh, in the impugned commercial, which follow the second query of Lady 2, answer as to why Puro's salt is healthy. Puro's salt is stated to be healthy because it is not whitened by bleaching, no chemicals are added for rendering it free flowing and it contains natural iodine. These are essential qualities attributed to Puro's salt, explaining why it is healthy. It is difficult to read, into the said comments, even an implied allusion to these qualities being absent in white salt.

**30.** In fact, one of the main errors in the submissions advanced by learned counsel for Tata, is that they have failed to notice that Lady 2 poses, not one, but two queries to Ms. Suresh, and that the comments regarding absence of bleaching, or addition of chemicals to render the salt free flowing and presence of natural iodine are responses to the query as to why Puro's salt is healthy. They are not responses to the query as to why Puro's salt is being preferred over white salt.

**31.** As Mr. Sibal correctly points out, it is not Tata's contention that any of the said comments are factually incorrect. Specifically, Tata does not contend either that Puro's salt is bleached, or that chemicals are added to it to make it free flowing or that it does not contain natural iodine.





**32.** Much effort was expended, by learned Counsel for Tata, particularly, Mr. Anand, to convince the Court that white salt is not bleached, at least by using any chemicals, the only chemical which is added being an anti-caking agent which is a permissible additive to render the salt free flowing. Iodisation is done as a statutory imperative.

**33.** Strictly speaking, however, these submissions are not of particular relevance as the impugned commercial of Puro does not allege otherwise. What Tata is doing is inferring, from the positive assertions in the impugned commercial, negative inferences regarding Tata's salt. There is *prima facie* substance in Mr. Sibal's contention that these inferences would require a leap of imagination, which an ordinary consumer would not undertake. At a *prima facie* stage at least, it is difficult for me to hold that all the positive assertions made with respect to Puro's Healthy Salt, in the impugned commercial, would inevitably result in a consumer reading, into those assertions, negative aspersions regarding Tata White Salt.

**34.** Learned Counsel for Tata submits, however, that the impugned commercial cannot be seen frame by frame, as what matters is the overall impression conveyed by the commercial to the average consumer who views it. Such a consumer does not either view or recollect, a commercial frame by frame. According to learned Counsel for Tata, the overall impression that the impugned commercial conveys to a consumer is that white salt is unhealthy and is required to be avoided.



35. Even if, *arguendo*, the said submission is accepted, the *Puro-I* TVCs would, nonetheless, stand in the way of any interlocutory injunctive relief being granted to the Tata in the present case. Even if it were to be assumed that, by inference, or indirectly, the impugned commercial alleges that white salt is bleached, or that chemicals are added to it to make it free flowing, or that iodine is added to white salt, the very same allegations are made, directly, against white salt, in the *Puro-I* TVCs. Once the Division Bench of this Court has, in *Puro-I*, not found the said TVCs to be disparaging of white salt, any opinion, by me, that the impugned commercial in the present case is so disparaging would clearly be contrary to the view expressed by the Division Bench in *Puro-I*.

36. Mr. Nayar's contention that there can be no precedent on facts in such cases, and that what matters is the overall look and feel of the impugned advertisement may, ephemerally, appear attractive. However, where the parties are the same, the products are the same, and the assertions contained in the allegedly offending advertisements are the same, it would be completely destructive of judicial discipline, as well as reflective of inconsistency in judicial decisions for a Single Bench to adopt a view contrary to that held by the earlier Division Bench. When the very same allegations which, according to Tata, can be read by inference into the impugned Puro commercial, have directly been leveled against white salt in the *Puro-I* TVCs, and a Division Bench of this Court has reversed the decision of the learned Single Judge injuncting the *Puro-I* TVCs, it is obviously not permissible for me, sitting singly, to find the assertions in the impugned commercial to be disparaging of Tata's white salt and grant injunction, as was done by



the learned Single Judge in *Puro-I*. When the very same allegations and assertions, levelled directly against white salt, have been found by the Division Bench of this Court not to be disparaging of Tata's product, I fail to see how Tata can expect me to return a finding of disparagement, especially at a *prima facie* stage. I am reminded of the following telling statement of the law, as expostulated by Justice K.S. Radhakrishnan, as he then was, sitting singly in the High Court of Kerala, in *Joy v. Regional Transport Authority*<sup>16</sup>:

*“3. Judicial discipline demands consistency in rendering judgments. A Judicial Officer may hold different views on various aspects. A Judicial Officer may err and pass contradictory orders inadvertently. But once it is brought to the knowledge of the Judicial Officer, he is duty bound to keep track of consistency. Inconsistent orders passed by a judicial officer almost in the same fact situation, and that too on the same day, would give rise to complaint of discriminatory treatment, which will undermine the people's faith in judicial system and the rule of law. It will cause resentment and anguish and make an imprint in the mind of the litigant that he has been discriminated. A Judicial Officer may err and pass illegal orders, but he shall not err in consistency. He should be consistent even in illegality.”*

(Emphasis supplied)

Thus, Puro having earlier directly levelled the very allegations against which Tata is, in the present case, aggrieved, and the Division Bench of this Court having found the said allegations not to be disparaging, Tata, clearly, has no *prima facie* case to urge.

**37.** *Puro-I*, therefore, substantially demolishes Tata's case. I am in agreement with Mr. Sibal that allowing the submissions advanced by Tata in the present matter would effectively be granting Tata a second bite at the litigative cherry, the first bite having proved to be more sour than salty. The Supreme Court having not expressed any view on

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<sup>16</sup> 1998 SCC OnLine Ker 344



merits regarding the decision of the Division Bench in *Puro-I*, that decision, therefore, continues to bind me as a Single Judge.

**38.** Even on the basis of the judgment of the Division Bench in *Puro-I*, therefore, the present application for interlocutory injunction has to be rejected.

Tata's own declaration on its Pink Salt pack, and concealment thereof

**39.** As a market leader, Tata is not lagging behind in the Pink Salt race. Tata packs and sells its own brand of pink rock salt, under the name “BB Good Diet Himalayan Pink Salt”, “BB” standing for “Big Basket”, a Tata enterprise. The pack is clearly marked as “Marketed by Big Basket A TATA Enterprise”. On the reverse of the Himalayan Pink Salt pack figures the following declaration, on which Mr. Sibal relies:

“Sourced directly from the salt mines of Himalayas, BB GoodDiet powdered Pink Salt is completely natural and free of any chemicals or additives. With natural minerals and taste, pink salt is traditionally used as a healthy alternative to common salt and is great for flavouring food. It is neither processed nor bleached, thus retaining its original flavor and nutrients. Bring out the best of flavor in every meal with bb GoodDiet Pink Salt.”

Mr. Anand's response was that, two days back, Tata has addressed a legal notice to Big Basket with respect to the afore-extracted recital. Mr. Sibal submits that the legal notice is merely in the nature of a knee-jerk afterthought reaction. By now, submits Mr. Sibal, Tata must have sold thousands of packs of its Himalayan Pink Salt, on the basis of the above declaration. Even otherwise, submits Mr. Sibal, Tata cannot now produce documents to answer the assertions in Puro's reply to the present application, having already, on 26 September 2023, forgone its



right to file a rejoinder. In Court, too, Mr. Anand agreed not to rely on the averments contained in the rejoinder that Tata now desires to file, or the documents filed therewith.

**40.** I agree with Mr. Sibal. Even otherwise, Mr. Anand does not dispute Mr. Sibal's contention on facts. That the above recital does, in fact, figure on the reverse of the pack of Tata's Himalayan Pink Salt, is not disputed by Tata. It is a bit too late in the day, now, for Tata to wish away its own declaration.

**41.** There is, however, a more serious aspect of the matter. I am in complete agreement with Mr. Sibal that the failure of Tata to make any reference, in the plaint, to its own Himalayan Pink Salt Pack, or to the afore-extracted recital which figures on the reverse of the pack, amounts to concealment of material facts. I am presently examining Tata's application under Order XXXIX Rules 1 and 2. Grant of any interlocutory relief, under Order XXXIX, is possible only where the applicant acts with equity. Equity is inherent in grant of relief under Order XXXIX. A litigant who suppresses material facts stands *ipso facto* disentitled from any equitable injunctive relief under Order XXXIX. In *Bhandari Engineers & Builders Pvt Ltd v. Vijaya Bank*<sup>17</sup> a Division Bench of this Court, speaking through Vikramajit Sen, J (as he then was), spoke:

“Secondly, an injunctory relief is essentially discretionary and equitable in nature. It is trite that if a material misrepresentation has been made by the Plaintiff, it disentitles itself from the grant of relief since it has transgressed equity while seeking it; having approached the Court with unclean hands it is not entitled to an injunction. Accordingly, once a Court arrives at the conclusion that a deliberate

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<sup>17</sup> 168 (2010) DLT 47 (DB)



and significant misrepresentation has occurred, it is within its powers to dismiss the suit itself.”

**42.** The very assertions which Tata finds so objectionable in the impugned commercial of Puro, regarding Puro’s product being natural, free from chemicals and additives, not processed or bleached and, most importantly, a healthy alternative to common salt, are selling points on the basis of which Tata has actually sold its own Himalayan Pink Salt. It was incumbent on Tata to have disclosed this fact. The relief-seeking litigant has to place his cards on the table, not hold them close to his chest. Tata is obviously aware that it is manufacturing and selling the very same product which is sold by Puro and forms the subject matter of the impugned commercial. It is also aware that the very same assertions which are made by Puro with respect to its product in the impugned commercial have been made by Tata with respect to its own Pink Salt. It has studiously concealed the said facts from the Court. It has, thereby, also completely disintitiled itself to equitable interlocutory injunctive relief.

**43.** The afore-extracted recital on the reverse of Tata’s Himalayan Pink Salt, therefore, further serves to defeat Tata’s claim to interlocutory injunctive relief on two counts. Firstly, the absence of any reference to this fact in the suit amounts to conscious concealment of material facts, which by itself disintitiles Tata to relief under Order XXXIX Rule 1 and 2 of the CPC. Secondly, what is sauce for the goose is, as Mr. Sibal points out, also sauce for the gander. If Tata can sell its Himalayan Pink Salt by advertising it as natural, free of chemicals and additives, and as being neither processed nor bleached *and, therefore, as a healthy alternative to common salt*, I see no reason why Puro



cannot do so. At the very least, having used the same expressions to sell its own products, *vis-à-vis* white salt, Tata cannot, at least at this interlocutory stage, seek any injunction against Puro using the very same expressions for its own Puro Healthy Salt, *vis-à-vis* white salt. For both these reasons, therefore, Tata is additionally disentitled to interim relief in the present matter.

#### Right of Puro to use the word “healthy”

**44.** Tata contends that Puro cannot depict or advertise its salt as “healthy”, as it would violate Regulations 4(7)<sup>1</sup> and 8(3)<sup>2</sup> of the Food Safety Regulations. There are four reasons why this submission cannot sustain.

**45.** Firstly, Puro Healthy Salt is a registered trademark of Puro. The registration is not under challenge. Section 28(1)<sup>18</sup> of the Trade Marks Act permits the holder of a registered trade mark to use the mark commercially, subject only to other provisions of the Trade Marks Act itself. Section 28(1) being in the nature of plenary parliamentary legislation, the right conferred thereby cannot be diluted by a Regulation, which is merely in the nature of subordinate legislation. The right of Puro to advertise and sell its product as Puro Healthy Salt cannot, therefore, be disputed, so long as there is no challenge to the registration of the mark “Puro Healthy Salt” in favour of Puro.

**46.** Secondly, the concluding sentence in the decision of the learned Single Judge in *Puro-I* allows Puro to sell its salt as “natural and

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<sup>18</sup> 28. **Rights conferred by registration.** –

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.





healthy”. This finding has not been disturbed by the Division Bench in its judgment dated 31 October 2019 in *Puro-I*. Tata cannot, therefore, now seek to contend that Puro cannot promote its salt as natural and healthy.

**47.** Thirdly, Regulation 4(7)<sup>1</sup> does not include, among the expressions which are treated as objectionable therein, the expression “healthy”. Even if “healthy” can be treated as an expression analogous to the expressions “natural”, “fresh”, “pure”, “original”, “traditional”, “authentic”, “genuine” or “real”, the use of “healthy” by Puro would nonetheless not infract Regulation 4(7)<sup>1</sup>, as the Sub-Regulation does not place any absolute embargo on the use of the expressions mentioned therein. What is prohibited is use of the said expressions in a manner which “is likely to mislead consumer as to the nature of food”. Tata does not even plead, in the suit, that Puro Healthy Salt is not healthy. In the absence of any such pleading, the use of “healthy” by Puro for its Pink Salt cannot be said to mislead the consumer in any way. The use of the expression does not, therefore, violate Regulation 4(7)<sup>1</sup>.

**48.** Fourthly, Regulation 8(3)<sup>2</sup> has been cited entirely out of context, without drawing the attention of the Court to the other sub-Regulations in Regulation 8. Regulation 8 applies only where a claim is made, relating to dietary guidelines or healthy diets. Sub-Regulations (2) and (3) of Regulation 8 essentially follow sub-Regulation 1, which permits claims to be made, relating to “a healthy diet” or any synonymous term referring to the pattern of eating as per the Dietary Guidelines issued by the Indian Council of Medical Research (ICMR) for Indians. It is in that context that sub-Regulation (3) does not allow foods to be described as



healthy or represent in a manner which implies that the food itself would impart health. Inasmuch as Puro is not making any claims relating to a “healthy diet” or describing Puro Healthy Salt as part of a healthy diet, sub-Regulation (3) cannot be said to be violated by the use of “healthy” as part of Puro’s registered trademark “Puro Healthy Salt”.

**49.** Tata’s objection that there is a statutory embargo on use of “Healthy” by Puro to describe its product is, therefore, bereft of substance.

**50.** In any event, this aspect is not of much significance at this interlocutory stage, as Tata can claim itself to be entitled to interlocutory relief against the impugned commercial only if, apart from its having, in its favour, a *prima facie* case and balance of convenience, is able to demonstrate that the impugned commercial also results in irreparable prejudice or loss to it.

#### Class Disparagement

**51.** Mr. Sibal does not join issue with learned Counsel for the plaintiffs on the proposition that an action for class disparagement is maintainable. He agrees, therefore, that an advertisement, or commercial, which disparages an entire class of goods can also be enjoined. He submits, however, that there is no instance of any such objection having been granted where the objectionable advertisement of commercial makes no reference, either express or implied, to the product of the plaintiff who seeks injunction.



52. On the aspect of whether an action for disparagement can lie at the instance of the plaintiff who is not named in the allegedly disparaging commercial or advertisement, but who claims to be aggrieved as a “market leader”, the Division Bench of this Court has, in *Dabur v. Colortek*<sup>7</sup>, observed:

“20. Learned counsel for the Appellant submitted before us that since his client has over 80% of the market share in the country and a 100% market share in some States, the obvious target of the commercial is the product of the Appellant. *In our opinion, this argument cannot be accepted. The sub-text of this argument is an intention to create a monopoly in the market or to entrench a monopoly that the Appellant claims it already has.* If this argument were to be accepted, then no other mosquito repellent cream manufacturer would be able to advertise its product, because in doing so, it would necessarily mean that the Appellant’s product is being targeted. *All that we are required to ascertain is whether the commercial denigrates the Appellant’s product or not.*”

(Emphasis supplied)

53. In the light of the afore-extracted observation from *Dabur v. Colortek*<sup>7</sup>, which binds me, the issue of whether, merely on the ground that it is a majority player in the market, a plaintiff can maintain an action of disparagement against a commercial which makes no direct or indirect reference to the plaintiff, remains highly debatable.

54. Mr. Nayar has drawn my attention to para 77 of the decision of the Coordinate Bench in *Marico*<sup>10</sup>, which read thus:

“77. If a class of goods are disparaged by an advertisement, a leader or person having substantial stake in the generic disparaged goods can maintain an action against the advertisement (Refer : *Dabur v. Emami*<sup>8</sup> – Chvawanprash case: and *Dabur v. Colgate*<sup>11</sup> -Lal Dant Manjan).”

No doubt, in para 77 of *Marico*<sup>10</sup>, the learned Single Judge has held that a leader, or a person having a substantial stake in goods which are



disparaged in a generic fashion, can maintain an action for disparagement. The learned Single Judge has said so, however, on the basis of the two earlier decisions in *Dabur v. Emami*<sup>8</sup> and *Dabur v. Colgate*<sup>11</sup>. Both these decisions have been rendered by learned Single Judges of this Court. My attention has not been invited to any judgment of a Division Bench of this Court which adopts this view.

55. On the other hand, the view appears *prima facie* to be contrary to what has been held in para 20 of *Dabur v. Colortek*<sup>7</sup>, extracted *supra*. *Dabur v. Colortek*<sup>7</sup> having been rendered by a Division Bench, it may be debatable as to whether the position of law enunciated in para 77 of *Marico*<sup>10</sup> represents the correct legal position. *Dabur v. Colortek*<sup>7</sup> being a decision of a larger bench than that which rendered *Marico*<sup>10</sup>, at a *prima facie* stage at least, I would have to follow *Dabur v. Colortek*<sup>7</sup>.

56. Even on this ground, therefore, as the impugned commercial makes no direct reference to Tata or to Tata's White Salt, the question of whether an action for disparagement can be maintained by Tata, merely on the ground that it commands 30% of the white salt market, may be debatable in view of para 20 of *Dabur v. Colortek*<sup>7</sup>.

57. That said, however, as the dispute, on facts and in law, stands covered against Tata by the judgment of the Division Bench in *Puro-I*, the issue of maintainability does not seriously impact the outcome of this application.

On merits, in the light of the law that has developed thus far



58. Not so long ago, I had, in *Reckitt Benckiser*<sup>6</sup>, occasion, in the light of a dispute substantially similar to the present, to examine the development of the law of disparagement in the context of commercial advertisements. From the judgments of Division Benches of this Court, which constitute binding precedents, in *Pepsi Co Inc v. Hindustan Coca-Cola Ltd*<sup>19</sup>, *Dabur v. Colortek*<sup>7</sup>, *Reckitt Benckiser (India) Pvt Ltd v. Hindustan Unilever Ltd*<sup>20</sup>, *Hindustan Unilever Ltd v. Reckitt Benckiser India Pvt Ltd*<sup>21</sup>, *Hindustan Unilever Ltd v. Reckitt Benckiser India Pvt Ltd*<sup>22</sup> and *Colgate Palmolive Co.*<sup>9</sup>, I had attempted to cull out the following definitive principles as emerging:

- (i) Where the advertisement does not directly or indirectly refer to the plaintiff's product, the plaintiff could not claim that its product was being targeted merely because it enjoyed a lion's share of the market. Targeting of the plaintiff's product is the *sine qua non*, whether expressly or by necessary implication. That implication cannot, however, be premised merely on the market share of the plaintiff's product.
- (ii) At the same time, even if the rival product was not specifically targeted, an indirect representation, which was sufficient to identify the product, was as good as direct targeting.
- (iii) Within the limits of permissible assertions, comparative advertising is protected under Article 19(1)(a) as commercial

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<sup>19</sup> 2003 (27) PTC 305 (DB)

<sup>20</sup> 2022 SCC OnLine Del 3094 (DB)

<sup>21</sup> 2023 SCC OnLine Del 2133 (DB)

<sup>22</sup> 207 (2014) DLT 713 (DB)



speech. In comparative advertising, a certain amount of disparagement is implicit.

(iv) Subject to the exception in (v) *infra*, an advertisement must not be false, misleading, unfair or deceptive, irrespective of whether it is extolling the advertised product or criticising its rival. Misrepresentation and untruthfulness in advertisements is impermissible. An advertisement has necessarily to be honest. It was not only, thereby, required to be accurate and true, but could also not convey an overall misleading message, seen from the stand point of the customer.

(v) Puffery is the only exception, as puffery, by its very nature, involves exaggeration and embellishment, and an element of untruth is bound to exist in it. Untruth in puffery is permissible only because puffery is inherently not taken seriously by the average consumer. Puffery is not, therefore, to be tested on the anvil of truth. Some elements of hyperbole and untruth is inherent in puffery.

(vi) Mere puffery is not actionable. One can claim one's goods to be better than others. Extolling the virtues of the plaintiff's product as containing natural ingredients, absent in other products, was not disparaging. Extolling of one's positive features is permissible.

(vii) However, denigration of a rival's or a competitor's product is completely impermissible. While it is permissible, therefore, to state that the advertised product is superior to the competitor's,





it is not permissible to attribute this superiority to some failing, or fault, in the product of the competitor. An advertisement cannot claim that a competitor's goods are bad, undesirable or inferior. The subtle distinction between claiming one's goods to be superior to the others', and the other's goods to be inferior to one's, has to be borne in mind.

(viii) Serious statements of facts cannot, however, be untrue. The truthfulness of such assertions or statements of fact is to be strictly tested.

(ix) What matters is the impression that the advertisement or commercial registers in the viewer's mind. The hidden subtext, so long as it is apparent to the average consumer, therefore, matters. The impact could be conveyed by clever advertising or innuendo instead of conveying of a direct message.

(x) The reasonable man, from whose point of view the advertisement is to be assessed, is a right thinking member of the general public, and not a member of any particular class or section. He

- (a) is not naïve,
- (b) can read between the lines,
- (c) can read in implication into the advertisement,
- (d) may indulge in some amount of loose thinking,
- (e) is not avid for scandal and



(f) does not select a derogatory, or bad, meaning to be attributed to an advertisement where alternative, non-derogatory meanings are also available.

(xi) While examining whether a commercial is disparaging, the Court is required to see

- (a) the intent of the commercial,
- (b) the manner of the commercial and
- (c) the story line of the commercial, and the message that it seeks to convey.

What has to be seen is the overall effect of the advertisement, i.e. as to whether the advertisement is promoting the advertised product or disparaging the rival product. The advertisement has to be seen as a whole, not frame by frame. While promoting his product, an advertiser might make an unfavourable comparison, but that may not necessarily affect the story line or message or have an unfavourable comparison as its overall effect.

(xii) The Court should neither undertake an over elaborate analysis, nor be too literal in its approach.

(xiii) The advertisement was to be viewed as a normal viewer would view it, and not with the specific aim of catching disparagement. The words used in the advertisement are meant to be understood in their natural, general and usual sense and as per common understanding.



(xiv) The time spent in showing the product was irrelevant; what was relevant was the context in which the product was shown.

(xv) A plaintiff cannot afford to be hypersensitive, as the choice of the article which a consumer would select would depend on various factors including market forces, economic climate and nature and quality of the product.

(xvi) It is necessary to provide a fair amount of latitude to the advertiser as well.

**59.** The said principles have subsequently been followed by another Coordinate Bench of this Court in *Marico*<sup>10</sup>.

**60.** A brief glance at the above Division Bench decisions, and the reasons for this Court to have held as it did, would not be out of place.

**61.** *Pepsi Co Inc v. Hindustan Coca-Cola Ltd*<sup>19</sup>

**61.1** The rival products, here, were Pepsi and Thums Up, both cola drinks. Two commercials were under challenge. The first commercial described Pepsi as a sweet drink for small children, with Thums Up being intended for grown-up boys. Two bottles are shown to a child. Both are covered. The lead actor asks the child to identify his favourite drink. Though the child's voice was muted, he lip-synchs "Pepsi". The boy is, thereafter, made to sample the contents of both the bottles. He



points to one, and says that children would like that drink, as it is sweet, and children like sweet things. His choice, he says, would be other drink, which tastes strong and would be preferred by grown-ups. The lids are lifted from both the bottles, whereupon the bottle containing the “sweet” drink is labelled “PAPPI”, but bears the distinctive Pepsi logo. The Court found, therefore, that the bottle was intended to represent Pepsi. The boy, on seeing this, places his hand on his head, indicating his embarrassment at having initially voiced his preference for Pepsi. The lead actor comments, “Wrong choice, baby”. The second commercial was on similar lines, and characterised Pepsi is a sweet drink for kids, with Thums Up being for grown-ups, or for kids who wanted to grow up.



**61.2** The Division Bench of this Court found the comment “wrong choice, baby”, in conjunction with the statement that Pepsi was sweet, and would be liked by children, to be derogatory. The impression conveyed was that, if children chose Pepsi, it would be a wrong choice. Pepsi, suggested the commercial, was a sweet thing, not meant for grown-ups or growing children. Interestingly, the Division Bench held that, though characterising Pepsi as a drink meant for children per se might not have been disparaging, the embarrassment displayed by the child on being told that the drink of his choice was not one meant for grown-ups and strong children was disparaging, as it depicted Pepsi as a product held in low estimation by the child and of little worth. The gesture of the boy placing his hand on his head to indicate embarrassment was also found to be denigrating, especially when seen in the backdrop of the lead actor’s comment, “wrong choice, baby”. This Court found that the impugned advertisement poked fun at Pepsi,



which was impermissible. Comparison, so long as it did not undervalue the rival product, was allowable, but it became objectionable the moment it transgressed into the realm of ridiculing, poking fun at, or denigrating the rival product.

## 62. *Dabur v. Colortek*<sup>7</sup>

62.1 The commercial under challenge, in this case, was the following:

STORY BOARD		
Video	Audio(Hindi)	Audio (English Translation)
	दो-दो पार्टियां हो रही है	Two parties are going on.
	एक बच्चों की, एक मच्छरों की	One for the kids and the one for mosquitoes.



	<p>अब कहने को मॉस्किटो रीपेलेन्ट क्रीम है, पर लगाओ तो मुत्तीबत... न लगाओ तो मुत्तीबत। लगाओ तो रैशेस, एलर्जी का डर... ऊपर से चिप-चिपी</p>	<p>Just to say there are Mosquito Repellant Creams. But if you apply them it's a problem and if you don't, even then it is a problem. If you apply you get rashes, there is a risk of allergy and on top of that its sticky</p>
	<p>और न लगाओ तो मच्छरों की ऐश... तो करें क्या... वही तो बताने आई हैं... गुड नाइट नैचुरल्स</p>	<p>and if you don't then its a fun time for mosquitoes. So what do we do? That is what I have come here to tell you. Good night naturals.</p>
	<p>तुलसी...</p>	<p>Made of Tulsi...</p>

Video	Audio (Hindi)	Audio (English Translation)
	<p>लैवेंडर....</p>	<p>Lavender...</p>
	<p>और मिल्क प्रोटीन से बनी...</p>	<p>And Milk Protein...</p>





	<p>गुड नाइट नैचुरल्स मॉस्किटो रीपेलेंट क्रीम...</p>	<p>Good Knight Naturals Mosquito Repellent Cream...</p>
	<p>मच्छरों की हार...</p>	<p>Mosquitoes lose...</p>
	<p>... स्किन से प्यार।</p>	<p>...love with your skin</p>

## 62.2 The division bench of this Court held as under:

“21. Learned counsel for the Appellant further submitted that the use of expressions such as an apprehension of getting rashes and allergy or an allegation that other creams cause stickiness amounts to disparagement of the Appellant’s product. We cannot agree with the submission of learned counsel. There is no suggestion that any other mosquito repellent cream causes rashes or allergy or is sticky. All that it is suggested is that if a mosquito repellent cream is applied on the skin (which could be any mosquito repellent cream) there may be an apprehension of rashes and allergy. Generally speaking, this may be possible depending on upon the quality of the cream, the sensitivity of the skin of the consumer and the frequency of use etc. – we cannot say one way or the other. The commercial does not suggest that any particular mosquito repellent cream or all mosquito repellent creams cause rashes and allergy. In fact, the Respondents are also trying to promote a mosquito repellent cream and it can hardly be conceived that all mosquito repellent creams (which would naturally include the Respondents’ product) cause rashes or allergy. All that the Respondent’s are suggesting is that since their product contains tulsi, lavender and milk protein such apprehensions are greatly reduced or that they should not reasonably exist.”



Thus, even in a case where the plaintiff's product was directly targeted, and there was an allegation of apprehension of rashes or allergy or possibility of stickiness, the Division Bench held that no disparagement could be said to have taken place. The Division Bench held that the only suggestion in the impugned TVC was that the use of any other mosquito repellent cream could cause rashes or allergy or render the skin sticky. The reference could be to any mosquito repellent cream. The commercial only refers to an apprehension of rashes and allergy. Apprehension of rashes and allergy could be relatable to the quality of the cream, sensitivity of the skin and frequency of use. No allegation could be read, into the impugned advertisement, that any particular mosquito repellent cream, or all mosquito repellent creams, cause rashes or allergy. All that the Division Bench found the impugned commercial to positively state was that Colortek's product contained Tulsi, Lavender and Milk Protein which greatly reduce such apprehensions. Dabur was found to be hypersensitive.

**63. *Reckitt Benckiser (India) Pvt Ltd v. Hindustan Unilever Ltd*<sup>20</sup>  
(“*Domex-I*” hereinafter)**

**63.1** This is the first of two TVCs which advertised Hindustan Unilever Ltd (HUL)'s Domex toilet cleaner. Its storyboard ran thus (translations of vernacular are provided in parentheses below the storyboard):






<p>जब क्या ले रहे हैं?</p>	<p><i>VO: ab kya le rahe hai?</i></p>
<p>टॉयलेट क्लीनर</p>	<p><i>VO: Toilet Cleaner</i></p>
<p>कोय सा?</p>	<p><i>VO: kyon sa?</i></p>





 	<p><i>VO: Harpic</i></p>
	<p><i>VO: Kyon?</i></p>
	



 <p>सही है इसके नाम से</p>	<p><i>VO: Kyon ki ye toilet saaf kare</i></p>
 <p>ये तोइसे से क्या नहीं आयेगी?</p>	<p><i>VO: To Toilet se badbu nahi aayengi?</i></p>
 <p>सही है!</p>	<p><i>VO: Sahi sawal!</i></p>





*VO: aur badbu ke liye*



*VO: behtar jawab hai DOMEX*



*VO: kyon ki toilet ki badbu se ladane ke liye*

*Disclaimer: Rachanatm ak Chitran*





 <p>एकदमसक चित्रण क्योंकि डोमेक्स की बंदू से खटने के लिए डोमेक्स में है फ्रेशगार्ड टेक्नोलॉजी</p>	<p><i>VO:</i> <i>DOMEX</i> <i>main hai</i> <i>FRESHGU</i> <i>ARD</i> <i>technology</i></p> <p><i>Disclaimer:</i> <i>Rachanatm</i> <i>ak</i> <i>Chitran</i></p>
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 <p>एकदमसक चित्रण जो ठिके जगह, वो भी पूरे 100 फ्लशेस तक और बंदू रखे दूर</p>	<p><i>VO:</i> <i>jo tike</i> <i>jada,</i></p> <p><i>Disclaimer:</i> <i>Rachanatm</i> <i>ak</i> <i>Chitran</i></p>
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 <p>एकदमसक चित्रण जो ठिके जगह, वो भी पूरे 100 फ्लशेस तक और बंदू रखे दूर</p>	<p><i>VO:</i> <i>who</i> <i>bhi pure</i> <i>100</i> <i>flushes tak</i></p> <p><i>Disclaimer:</i> <i>Rachanatm</i> <i>ak</i> <i>Chitran</i></p>
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 <p>एकदमसक चित्रण जो ठिके जगह, वो भी पूरे 100 फ्लशेस तक और बंदू रखे दूर</p>	<p><i>VO:</i> <i>aur</i> <i>badbu</i> <i>rakhe door</i></p> <p><i>Disclaimer:</i> <i>Rachanatm</i> <i>ak</i> <i>Chitran</i></p>
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	<p><i>VO: Meri maniye, Chuniye DOMEX</i></p> <p><i>Disclaimer: simulated toilet use per kiye gaye Swatantra lab test per aadharit, 2021</i></p>
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[Translations:

*Ab kya le rahe hain* = now what are you buying

*Kaun sa* = Which one

*Kyon* = Why

*Kyonki yeh toilet saaf kare* = Because this cleans the toilet

*To toilet se badbu nahin aayegi* = Then will the toilet not emit any bad smell

*Sahi sawal* = Correct question

*Aur badbu ke liye* = And to remove the bad smell

*Behtar jawab hai Domex* = The better alternative is Domex

*Kyon ki toilet ke badbu se ladne ke liye* = Because to fight the bad odour in the toilet

*Domex mein hai Freshguard technology* = Domex has Freshguard technology

*Jo tike zyada* = Which stays longer

*Who bhi pure 100 flushes tak* = And that too up to 100 flushes



*Aur badbu rakhe door* = And keeps bad odour away

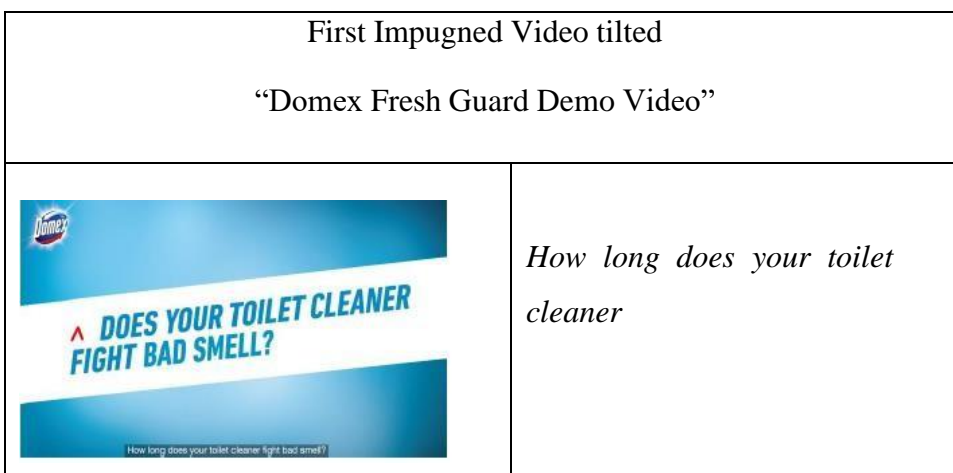
*Meri maniye, chuniye Domex* = Listen to me, choose Domex]

**63.2** The commercial was found to be disparaging of Harpic. Identifying the principal features of the commercial, this Court noted that (i) the mother was shown as a regular customer of Harpic, (ii) the shelves were shown completely stacked with Domex, with Harpic occupying a relatively small portion of a single shelf, shared with other products, (iii) when the mother responds to her son's query as to why she is choosing Harpic, by answering that it cleans the toilet, her son pinches his nose and, with a disgusted expression, asks whether, in that case, the toilet would cease emitting a foul odour, (iv) the mother looks concerned and disturbed at the query, and (v) a fellow customer, then, appreciates the child for having asked the correct question, and, picking up a bottle of Domex, asserts that Domex is the better solution. The commercial was found to convey a direct message that Harpic did not address the problem of foul odour being emitted from the toilet, *inter alia* because of the query and gestures of the child and the concerned expression of the mother. The toilet bowl which was shown in the advertisement was also discoloured, to reflect sediments which were emanating a foul odour. The response of the fellow customer clearly stated that Domex provided a better solution, as it had Freshguard technology. On the other hand, the reflection of the mother as a regular Harpic customer, seen in conjunction with the condition of the toilet and the child's concern that it used to emit a foul odour, conveyed the message that users of Harpic would have to live with foul odour emanating from the toilet. The message was, therefore, found to be clearly disparaging.



**64. Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Pvt. Ltd<sup>21</sup>  
(“Domex-II” hereinafter)**

64.1 Here, too, the targeted product was Reckitt’s Harpic, once again by Domex. One print commercial and three TVCs were under challenge. The impugned commercials may be represented thus:





	<p><i>Fight bad smell?</i></p>
	<p><i>Let's pour</i></p>
	<p><i>Some odour causing fluids in a clean toilet and find out</i></p>
	<p><i>As you can see</i></p>
	<p><i>Ordinary toilet cleaners cannot fight odour causing fluids</i></p>





	<p><i>Whereas Domex FreshGaurd does not let these fluids stick for up to 100 flushes.</i></p>
	<p><i>Keeping your toilet fresh</i></p>
	<p><i>Keeping your toilet fresh</i></p>
	<p><i>Domex Fresh Guard</i></p>
	<p><i>Fight bad smell for up to 100 flushes</i></p>





Second Impugned Video titled

“Domex Fights Bad Smell For Long”

	<p><i>VO: Aapka toilet cleaner kabtak badboo se ladhata hai?</i></p>
	<p><i>VO: Domex Ladhe 100 flushtak!</i></p>
	<p><i>Disclaimer: Toilet cleaner, bina water-repellent technology ke sandharbha main Simulated toilet per kiye gaye swatantra lab test par aadharit, 2021</i></p>

[Translations:







*Aapka toilet kab tak badboo se ladta hai?* = Till when does your toilet fight foul odour?




*Sirf ek flush tak* = Only till one flush

*Domex lade 100 flushes tak* = Domex fights to 100 flushes

*Kya sadharan toilet cleaner badbu nahin skip kar pa raha hai?* = ,  
Ordinarily toilet cleaners not able to remedy foul odour?]

Third Impugned Video titled “Domex Freshgaurd Helps Skip Bad Smell”	
	<p><i>VO: kya sadharan toilet cleaner badbu nahi skip kar paraha hai?</i></p>
	
	
	



	<p><i>Disclaimer: toilet cleaner, bina water repellent technology ke sandharbh main</i></p>
	<p><i>VO : Chune Domex FreshGuard</i></p>
	<p><i>Disclaimer : simulated toilet use per kiye gaye swartantra lab test per aadharit, 2021</i></p>

**64.2** Here, too, this Court noticed that the toilet bowl which was cleaned using Domex was blue in colour, with flowers and a fragrance shown emanating from the bowl, whereas the toilet which was cleaned using Harpic, and not Domex, was dirty with green fumes emerging from it. Harpic was specifically named. This Court found that HUL had every right to extol its Domex, but could not, simultaneously, disparage or run down Harpic. Additionally, in the absence of any tangible material to support the assertion that Domex fought foul odour for up to 100 flushes, this Court found the said assertion to be unjustified. Being a serious statement of fact, unsupported by corroborative material, the Division Bench did not deem it appropriate



to interfere with the decision of the learned Single Judge to interdict all the impugned commercials.

**65. *Hindustan Unilever Ltd v. Reckitt Benckiser (India) Pvt Ltd*<sup>22</sup>**

**65.1** Reckitt, in this case, alleged that the commercial of HUL's Lifebuoy soap disparaged Reckitt's Dettol soap. The advertisement stands thus described in para 56 of the decision of the Division Bench:

“56. It would be necessary to briefly summarize the whole advertisement. A doctor and his wife return home on a rainy day. The wife plans to bathe and she takes out an orange bar of soap from a green wrapper. This part of the film is less than two seconds. The husband, at this stage exclaims that his wife can only be saved by God; later he and the children sing out that naadan (the ignorant) should be given wisdom and all of them should be saved from naiveté; the wife, surprised at this, questions them. Next, the husband holds up the orange soap (this for about 2 seconds) and says that with such cure, a blessing too would be necessary. In the next scene, a bathing lady is shown raising the said orange bar of soap; it is accompanied by a male voice over which states that ordinary antiseptic soaps dry up the skin; the camera then zooms to the upper arm, shown under a magnifying glass revealing cracked skin with green germs lodged in them. The male voice then comments that germs get into the cracks (of the skin). As if to emphasize the idea, the term “ordinary antiseptic soap” appears on the screen. Next in a water shot, a bar of red LIFEBOUY soap emerges out of the water. This scene highlights the words “Glycerine” and “Vitamin E” and the male voiceover states this is why, new Lifebuoy Skin Guard). To underline the idea, the arm under the magnifying glass is shown again, this time with a voice over stating that it (LIFEBOUY) attacks germs; the scene then shows glycerine flowing - and the voice over adding that (LIFEBOUY) also builds a protective wall. The next scenes show that the wife allays the fears of her family, and all of them saying that they have no fear (thus suggesting that the wife accepted the suggestion to stop using the antiseptic soap and had started to use LIFEBOUY). The final part of the advertisement shows a LIFEBOUY Skinguard bar of soap and its package with the LIFEBOUY logo zooming onto the package and the male voice-over announcing “Lifebuoy Skin Guard”; the Hindustan Lever Limited logo is then focused and the advertisement ends then.”



**66.** The learned Single Judge had, in this case, observed that a user of Dettol soap would easily be able to identify the soap in the commercial as the original Dettol. The Division Bench opined that this was not the correct test to apply, as the commercial had to be seen from the point of view of the general public, not by adopting a sectarian approach. The Division Bench also held that the commercial had to be viewed as a whole, and not frame by frame, and that the time spent, in the commercial, in depicting the Lifebuoy soap bar was not determinative. The possibility of “clever advertising” was also noted. Applying these principles, the Division Bench held that, by emphasising the effects of antiseptic on the skin, and specifically targeting antiseptic soaps, in the backdrop of the depiction of Dettol soap in the commercial, a powerful message that Dettol soap was harmful to the skin was transmitted to the viewer. The commercial was, therefore, found to be disparaging.

**67. *Colgate v. HUL*<sup>9</sup>**

**67.1** Colgate alleged that HUL’s commercials for its Pepsodent toothpaste disparaged Colgate’s own “Colgate ST” toothpaste. Under challenge were a TVC and a print advertisement.

**67.2** The Division Bench dealt with the TVC and the print advertisement separately, first addressing the challenge to the TVC.

**67.3** This decision, besides reiterating many of the trite principles applicable to legitimate comparative advertising, adverted, at some length, to the “multiple meaning rule” which was thus explained in paras 34 and 35 of the judgment:





“34. However, *in the event, it is found that the intent itself is to convey the meaning which is disparaging then merely because an innocuous meaning is available, the action by an aggrieved party would not be frustrated. Thus, if a person wilfully and intentionally uses a disparaging expression and puts out an advertisement which can, plausibly, be construed as disparaging the goods and services of the other and the intention of putting out that advertisement is to seek benefit from making disparaging statements against competitor's goods, it would hardly be just or fair to afford such party the defence that the advertisement could also, possibly, be construed in an innocuous manner which is not harmful.*

35. The learned counsel for the respondent has advanced his contentions in respect of the multiple meaning rule on the fundamental premise that it is mutually exclusive to the test, as to the inference drawn by an average reasonable man reading or viewing the advertisement. However, this in our view is erroneous as *applying the multiple meaning rule does not, by implication, exclude the need to examine as to how the advertisement is viewed by an average reasonable person.* It is now well settled that in order to examine the question, whether an advertisement is misleading or whether the same disparages the goods/services of another or leads a viewer to believe something which is not true, it must be examined as to how the same is perceived by an average reasonable man. But *we do not think that in order to examine how a reasonable man views an advertisement, all perceptions except one must be discarded.* While determining how an advertisement is viewed by a reasonable person, in some cases, *it may be necessary to examine whether an average reasonable person could view the advertisement in a particular manner, even though another reasonable view is possible. We do not think, it is necessary that all reasonable views except one must be discarded while determining the question as to how an advertisement is perceived.* The presumption that there must be a single reasonable man militates against the principle that two or multiple acceptable views may be adopted by different persons who are fully qualified to be described as reasonable persons.”

(Emphasis supplied)

It was clarified, however, in para 39 of the judgment, that the applicability of the multiple meaning rule was restricted to cases where two meanings were possible. In this context, the Division Bench held that the consumer, through whose eyes the allegation of disparagement was to be examined, is not to be treated as a person who chooses, from the commercial, an adverse meaning in preference to an innocuous one,





and that the Court was also required, in such cases, not to undertake an over-elaborate analysis. It was observed that the reasonable reader of a newspaper did not accord, to it, “an analytical attention of a lawyer to the meaning of a document” – a metaphor which was probably chosen as it is closer to home.

**67.4** Applying the determinative principles to the TVC before it, the Division Bench first described the commercial in controversy thus:

“41. The impugned TVC starts with a close up of a signage which reads as “PREVENTIVE CAVITY TEST”. The font size of the word “PREVENTIVE” is significantly smaller than the font size of the words “CAVITY TEST”. The advertisement thereafter shows two children with their respective mothers standing behind them. The children are shown brushing their teeth. While one child is shown to be brushing with Colgate ST (hereinafter referred to as ‘Colgate child’). The other child is shown to be brushing with Pepsodent GSP (hereinafter referred to as ‘Pepsodent child’). The children seem to be participating in some sort of an experiment which relates to the effectiveness of the two Toothpastes. The packaging of both Colgate ST and Pepsodent GSP are clearly visible in the TV Commercial. After the children finish their brushing, the Colgate child shows his teeth to the dentist and invites him to test his teeth. In conformity with the storyline, this can only mean the Preventive Cavity Test which was indicated at the commencement of the commercial. The dentist does not conduct the test and asks the Colgate child to go, on which the Colgate child shows his surprise and states “Aapne hi to bola tha, Cavity Test Hoga” (freely translated means “you only said that there would be a Cavity Test”). The dentist then explains to the Colgate child “Asli Test Ab Nahi, Tab Karenge Jab Cavity Ka Khatra Zyada Ho” (freely translated means “the real test would not be now, but would be done subsequently when the danger of cavity is higher”).

42. The next shot of the commercial depicts the children four hours later and this is indicated by a Super appearing on the left hand side of the frame simultaneously on the right hand side of the frame a clock is seen rapidly moving from 8 to 12. This clearly depicts the passage of time of four hours. The next set of frames depict both the ‘Colgate’ and ‘Pepsodent’ children with their respective lunch boxes and at that moment, the dentist appears alongwith the respective mothers of the two children. The dentist



takes out some sort of hand held scanning device which is depicted as a tool to examine the teeth of the two children. The next frame is a split frame where the light emanating from the scanning device is shown to pan on the teeth of the two children. On the left hand side (Colgate Child's side of the screen) the product Colgate ST is clearly visible and which identifies that the Colgate child has used Colgate ST. Similarly, on the right hand side (Pepsodent Child's side of the screen) Pepsodent GSP is visible. A screen shot of this frame is reproduced herein below :-



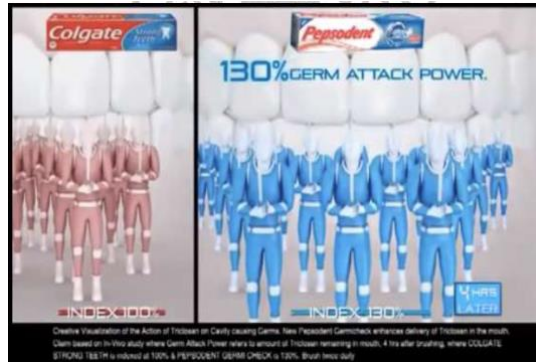
43. The next frame is again a split screen where alien looking creatures depicting Triclosan as soldiers are shown. The Triclosan soldiers pertaining to Colgate are shown in red and Triclosan soldiers pertaining to Pepsodent are shown in blue. The right hand side frame also bears the caption 100% germ attack power, below the Pepsodent GSP tube. The expression "INDEX 100%" is indicated at the bottom of both the split frames. A screen shot of the frames is reproduced herein below :-



The right hand side split screen expands rapidly and the term 100% in the caption "100% germ attack power" is also shown increasing to 130%. Simultaneously, the Colgate side of the screen diminishes



in proportion. A screen shot of the frames is reproduced herein below :-



At this stage, the following super appears at the bottom of the screen :-

“Creative Visualization of the Action of Triclosan on Cavity causing Germs. New Pepsodent Germicheck enhances delivery of Triclosan in the mouth. Claim based on In-Vivo study where Germ Attack Power refers to amount of Triclosan remaining in mouth, 4 hrs after brushing, where COLGATE STRONG TEETH is indexed at 100% and PEPSODENT GERMI CHECK is 130%. Brush twice daily.”

The impugned TVC then ends with a statement “Naya Pepsodent Germicheck Colgate Ke Mukable 130% Germ Check Power” (freely translated means “new Pepsodent Germ check gives 130% germ check power in comparison with Colgate”).”

**67.5** This Court held that the TVC did not show the child, who had used Colgate ST toothpaste to have suffered any ill effects as a result and could not, therefore, be said to denigrate Colgate ST toothpaste in any manner. The matter was, however, remanded to the learned Single Judge, as the Division Bench was of the view that the permissibility of the TVC had to be examined from the point of view of the truthfulness of the quantitative statements made in the commercial, which amounted to serious representations of fact, and which had, therefore, to be truthful in order to pass legal muster.



**67.6** HUL's print advertisement, also under challenge, was described thus, in para 56 of the decision:

“56. A full page advertisement that was published in the Hindustan Times showed a hand gripping a product Pepsodent GSP and below which was a caption “IT'S TIMES TO ATTACK”. The lower half of the page of the impugned print advertisement depicted a comparison between Colgate ST and Pepsodent GSP and the caption boldly stated read as “PEPSODENT - NOW BETTER THAN COLGATE STRONG TEETH. DELIVERS 130% GERM ATTACK POWER.” Lower half of the impugned print advertisement is split in two parts, one part is the Pepsodent side which is in a blue background. The other part is the Colgate side which is in a red background. Each part has picture of a child. The child on the Pepsodent side (referred to as the “Pepsodent Child”) is depicted holding a spoon and is in the process of consuming a visibly appetising dessert (a slice of cake or pastry which has a liberal dose of chocolate syrup) which is placed before him. The product Pepsodent GSP is clearly visible on the Pepsodent side of this advertisement. On the Colgate side, the child (referred to as the “Colgate Child”) is shown to be unhappy. Although, a plate of dessert is before him, he is not shown to be consuming the same but is shown as having placed his clenched fist on his jaw clearly depicting certain amount of discomfort, obviously, on account of a dental problem. The dessert placed before the child is also not as appetising. On the centre of the lower half of the page is a depiction of a tooth, which on the Pepsodent side is shown as covered in green spots barring one spot which is shown in white. The Colgate side of the tooth is depicted having red and white spots. The caption on the tooth states “4 Hours After Brushing”. On the lower portion of the impugned print advertisement, a picture of Pepsodent GSP alongwith the caption “Non-Stop Attaaaack! on cavity causing germs” is printed. The advertisement contains a Super which is in fine print and reads as under : -

“Creative Visualization of the Action of Triclosan on Cavity causing Germs. New Pepsodent Germicheck enhances delivery of Triclosan in the mouth. Claim based on In-Vivo study where Germ Attack Power refers to amount of Triclosan remaining in mouth, 4 hours after brushing, where COLGATE STRONG TEETH is indexed at 100% and PEPSODENT GERMI CHECK is 130%. Brush twice daily.”



The lower half of the impugned print advertisement is reproduced herein below :-



**67.7** Apropos the print advertisement, the Court held that the immediate visual impression conveyed by a glance at the photograph of the two children was that the child who used Pepsodent was able to enjoy a sinfully delicious-looking desert, whereas the other child, cute as a button though he is, was suffering from toothache as a result of having, in an ill-advised moment, used Colgate ST. This, it was held, was clearly disparaging.

## **68. *Reckitt v. Wipro*<sup>6</sup>**




**68.1** Though, as rendered by me, this is a single-Judge decision, I think it to be of relevance essentially because the dispute has several points of similarity with the one hand. The allegation, as levelled by Reckitt, was that Wipro's commercial, for its Santoor liquid handwash, disparaged Dettol liquid soap. The Santoor storyboard was as under:









Screenshot	Voice over /Action
	<p>DAUGHTER:</p> <p><i>Mere sath khelo</i></p> <p><i>Mummy.</i></p> <p>Translation:</p> <p>Mummy please play with me.</p>
	<p>[Mother shown washing hands with SANTOOR handwash]</p>



	<p>[Mother shown playing with her daughter]</p>
	<p>DAUGHTER [amazed by the softness of mother's hands]:  So soft.</p>
	<p>DAUGHTER:  <i>Phir se banao.</i>  Translation: make it again.</p>





 	<p>VOICE OVER:</p> <p><i>Haath itne soft ki chhodne ka mann na kare.</i></p> <p>Translation:</p> <p>The hands are so soft that you do not feel like leaving them.</p>
  	<p>VOICE OVER:</p> <p><i>Saadhaaran handwash ke muqable naye Santoor Handwash mein hai chandan ke gun jo rakhe haathon ko soft.</i></p> <p>Translation: as compared to ordinary hand washes, Santoor Handwash has, in it, the benefits of sandal, which keeps the hands soft.</p>



	<p>VOICE OVER:</p> <p><i>Ab har sparsh mein komalta.</i></p> <p>SANTOOR HANDWASH.</p> <p>Translation: now, softness in every touch. Santoor Handwash.</p>
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**68.2** The similarities between the commercial impugned in *Reckitt v. Wipro*<sup>6</sup>, and that under challenge in the present case, are too stark to be ignored. If anything, Tata's case, in the present matter, is weaker than Reckitt's case, *vis-à-vis* Wipro. In that case, Dettol was directly attacked, as, though the bottle in question, which was substituted by the Santoor bottle, did not bear the Dettol label, it did bear the unmistakable shape of Dettol liquid handwash, and, moreover, Wipro conceded, before the Court, that the bottle was indeed intended to represent Dettol. Furthermore, in that case, the commercial clearly showed the mother of the girl – whom I had chosen to christen Priya – replacing the Dettol bottle with the Santoor bottle. To reiterate, therefore, the attack was more direct. Even so, applying the principles that the aforementioned binding decisions of Division Benches of this Court has laid down in the matter of legitimate comparative advertising, I found myself unable to injunct Wipro's Santoor commercial as disparaging, as



- (i) the commercial did not make any reference to any property or characteristic of Dettol, positive or negative, the entire narrative, in Wipro's commercial, being restricted to the qualities of Santoor,
- (ii) the message that was conveyed was that Santoor was superior to other similar handwashes, as it contained sandal, which had moisturising qualities, and
- (iii) Reckitt's contention that the impugned commercial, in
  - (a) showing Priya to be amazed at the softness of her mother's hands,
  - (b) showing the Dettol bottle on the shelf, indicating that, till then, the household was using Dettol, which left Priya's mother's hands dry and hard,
  - (c) depicting the removal, from the shelf, of the Dettol bottle and its replacement with the Santoor bottle, thereby indicating that Dettol was useless and Santoor alone could keep the hands soft,
  - (d) providing a simultaneous voice over, declaring that Santoor had moisturising properties, which Dettol lacked and
  - (e) a second voice over, towards the conclusion of the commercial, that, "ab" (now) every touch of Priya's mother's hands would be soft, clearly dedicated towards



Dettol, disparaged Dettol, was found by me to be unconvincing, as

(i) Priya's delight at the softness of her mother's hands did not convey a message that, earlier, her mother's hands had not been soft,

(ii) in any event, it did not convey a message that the earlier hand wash being used by Priya's mother did not moisturise,

(iii) the discerning consumer – for disparagement cannot be examined from the point of view of a customer who will pick up anything that he finds, and the “initial interest” test, which is determinative in trade mark infringement cases, has no application where the question is one of disparagement – would immediately recognise Wipro's commercial as a pure case of comparative advertising,

(iv) the commercial would not, therefore, ordinarily deter such a consumer from continuing to use Dettol, if he earlier was using it, though it could, possibly, persuade him to try out Santoor,

(v) the replacement of the Dettol bottle with the Santoor bottle, too, did not denigrate Dettol, but merely conveyed the message that Santoor was preferable over other hand washes, and could not be



regarded as “rubbishing” Dettol, as Reckitt sought to contend, in the absence of any positively denigrating comment,

(vi) even if the replacement of the Dettol bottle with the Santoor bottle indicated Priya’s mother’s intention of thereafter using Santoor instead of Dettol, that qualitative choice did not convey a message, to the consumer, to discontinue using Dettol, or denigrate or condemn Dettol in any manner,

(vii) insofar as the positive assertions in the commercial were concerned, all that said was that Santoor contained sandal, ordinary handwash did not contain sandal, and that sandal moisturised the skin, the truth of which was not in question, and

(viii) the concluding comment that, now, every touch of Priya’s mother would be soft, was nothing but puffery as, howsoever moisturising a handwash were to be, it could not guarantee permanent softness to the skin; ergo, it could not be regarded, in any manner, as a qualitative comment on Dettol.



### Applying the principles

**69.** The findings in *Reckitt v. Wipro*<sup>6</sup> may almost be transposed, wholesale, into the facts of the present case; so stark are the similarities between the two. In the present case, too, there is no direct reference to Tata's white salt, though the commercial does refer to white salt in general. Unlike the situation which obtained in *Reckitt v. Wipro*<sup>6</sup>, there is no overt, or covert, representation of white salt being removed and being replaced by Puro Healthy Salt. As in that case, all positive assertions, in Puro's commercial, are with respect to Puro Healthy Salt. Just as Wipro emphasised the presence of sandal, in Santoor, as imparting moisturising properties to it, thereby highlighting its advantages, Puro's commercial emphasises the natural character of Puro Healthy Salt, owing to its not being bleached, being free of any added chemicals and possessing naturally occurring iodine, as features which rendered it a healthy alternative. Extolling one's product, even if it borders on exaggeration, is perfectly permissible in comparative advertising and, so long as it does not contain serious representations of qualitative or quantitative facts, does not even have to pass the test of truth. What is proscribed is denigration of the rival's product. Declaring one's product to be superior to the other's, or even to all others, is permissible in comparative advertising. It is only where the purported inferiority of others' products, to one's own, is attributed to some specific feature, which is described in qualitative or quantitative terms, that the truth of the assertion is required to be established.

**70.** One is reminded of the three hairdressers on the street, the first of whom declared himself to be the best hairdresser in the country, the





second claiming to be the best hairdresser in the city and the third that he was the best hairdresser on the street. Each puffed, and, in each case, there was clear comparison with the other hairdressers. The discerning consumer would not, however, regard the boast, of any of the hairdressers, as the result of a qualitative or quantitative study of his comparative merits *vis-à-vis* the other hairdressers. It would be regarded as plain puffery, and nothing more. Inasmuch as the claim to superiority was not predicated, in any of the cases, on any serious representation of fact, the claim, in each case, passes the test of comparative advertising.

**71.** It is only, therefore, where there is some degree of adverse comment, in the impugned commercial, regarding the plaintiff's product, that Courts have injuncted.

**72.** Applying the principles culled out in the aforementioned decisions, it cannot be said that the Puro's impugned commercial disparages white salt even generically, much less can it be said that it disparages Tata's White Salt particularly. Though the overall look and feel of the advertisement of the commercial is what matters, that look and feel has to be assessed from the point of view of a consumer who is conscious of what the commercial says and depicts. The mind of the consumer is expected to take in everything that is contained in the commercial, even if it is not on a frame by frame basis. The effect of the commercial cannot be examined from the point of view of a consumer whose mind works in fast forward mode.



73. Viewed thus, the impugned commercial, clearly, merely extols Puro Healthy Salt, in the same manner in which Tata, on the package of its Himalayan Pink Salt, extols that product. The very same features which have been emphasized by Tata as the USP of its Himalayan Pink Salt are the features which stand emphasized by Ms. Suresh as the distinguishing features of Puro Healthy Salt. The mere fact that these features have been cited by Ms. Suresh as the factors which render Puro's salt healthy, and compels her to use Puro Healthy Salt even if white salt is available in the house, cannot be said to disparage white salt in any manner.

74. Correctly seen, in fact, the statements of Ms. Suresh in the impugned commercial merely explain why despite the existence of white salt in the house, she is using Puro Healthy Salt and why Puro Healthy Salt is healthy. The commercial does not even suggest that Ms. Suresh will stop using white salt, much less that white salt should not be used.

75. This, in my view, is an extremely significant feature of the impugned commercial, which completely defeats any allegation that it is disparaging in nature. The impugned commercial does not, directly or indirectly, propose to state that Puro Healthy Salt is preferable over white salt, much less does it provide any reasons in that regard. Ms. Suresh's statement that, even when white salt is available in the house, she is using Puro Healthy Salt as it is healthy cannot be read as meaning that white salt is unhealthy or that she would not use white salt any further. Much less can it be said to be an advisory to consumers – as was the case in the impugned advertisements in *Puro-I* – not to use



white salt. To that extent, the case of the plaintiff in the present instance is even stronger than that of the plaintiff in *Reckitt Benckiser*<sup>6</sup>. In that case, after extolling the virtues of Santoor, there was a fleeting image of the replacement, by the actress, of the bottle of Dettol with the bottle of Santoor. Even that is absent in the present case. There is nothing, in the present case, to indicate either that Ms. Suresh intends to replace white salt with Puro Healthy Salt or is advising consumers to replace white salt with Puro Healthy Salt. She merely sets out the reasons why, even when white salt is available in the house, she is using Puro Healthy Salt. To that extent, the impugned commercial does not even make a comparison between Puro Healthy Salt and white salt, much less Tata's White Salt.

**76.** It must always be remembered, in cases where commercials and advertisements are called into question as being disparaging, that what weighs in the balance is the right to free speech and to promote one's product in the manner one deems most appropriate. This is an essential feature of the right to trade and business. A competitor must not be permitted, by seeking recourse to litigative measures, or by approaching Court, to dictate the manner in which his rival's product is to be advertised. His right begins and ends with ensuring that his product is not disparaged. Additionally, the highest that he can seek is that the rival does not, in puffing up his product, resort to serious representations of fact which are misleading or incorrect, or in support of which no quantitative or qualitative data is forthcoming.

**77.** No such misrepresentation of fact, qua Puro Healthy Salt, is alleged to have been made in the present case. Tata does not allege that



any of the representations made, in the impugned commercial, with respect to Puro Healthy Salt, is incorrect.

**78.** What Tata seeks to do is to read, into the said assertions, by an involved process of influential analysis, adverse comments regarding white salt and, particularly, regarding Tata's White Salt. The principles enunciated in binding precedential decisions, culled out earlier, do not either permit or justify any such inferences being drawn, as a basis to seek an injunction on the ground of disparagement.

**79.** The impugned commercial is, therefore, in my considered opinion, well within the boundaries of what is permissible in comparative advertising. If a commercial as innocuous as this is to be enjoined, one may as well completely do away with the concept of comparative advertising altogether. It is difficult to envisage comparative advertising being undertaken in a manner which is more innocuous than what Puro has done.

### **Conclusion**

**80.** I am, therefore, of the considered opinion that Tata has failed to make out any *prima facie* case justifying interference with continued broadcasting of the impugned commercial. Tata also stands disentitled to any injunctive interlocutory relief as, on merits, the case is squarely covered against Tata by the judgment of the Division Bench in *Puro-I*, as also because the plaint completely suppresses the fact that the very assertions, in the impugned Puro commercial, which Tata finds disparaging of white salt, have been used by Tata itself in selling its Himalayan Pink Salt, to tout it as a "healthy alternative" to white salt.



**81.** I am not convinced that Tata is entitled to any interlocutory injunctive relief, therefore, either on merits or in equity.

**82.** The application fails and is dismissed.

**C. HARI SHANKAR, J.**

**OCTOBER 10, 2023**

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