

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. /2009

Between:

The Cancer Patients Aid Association

Having its Registered Office at 5, Malhotra House,
Opposite GPO, Mumbai - 400 001

Having its Bangalore Branch Office at:

746, 8th Cross, 10th Main, Indiranagar 2nd Stage,
Bangalore - 560 008.

Represented by its Chairman and Founding Member

Mr. Yogendra K. Sapru

Petitioner

And

1. The State of Karnataka,
Health and Family Welfare Department
Directorate of Health and Family Welfare Services
Anand Rao Circle
Bangalore - 560009
Represented by its Principal Secretary
2. The State Anti-Tobacco Cell
Anand Rao Circle
Bangalore - 560009
Represented by its Chair Person
3. The State of Karnataka
Department of Pre-University Education
18th Cross, Malleshwaram,
Sampige Road,
Bangalore
Represented by its Commissioner
4. The State of Karnataka

Department of Education (Primary and Secondary)
Room No. 641, 6th Floor,
M.S. Building,
Bangalore – 560001
Represented by its Principal Secretary

5. The Bruhat Bangalore Mahanagara Palike (BBMP)
Bangalore
Represented by its Commissioner

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6. The Commissioner of Police
Office of the Commissioner of Police,
Infantry Road,
Bangalore Respondents
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**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA**

The Petitioner submits as follows:

1. This Petition is filed as public interest litigation under Article 226 and 227 of the Constitution of India and is filed for the effective implementation of Section 4 and 6 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisements and Regulation of trade and Commerce, Production, Supply and Distribution), Act 2003 hereafter referred to as the "COTPA, which regulates the sale of cigarettes and tobacco products to minors. Section 4 bans smoking in public places and public places includes educational institutions. Section 6 of the COTPA clearly mandates that no cigarettes or tobacco products shall be sold to any person under 18 years of age or in an area within the radius of 100 yards of any educational institutions. Despite the clear statutory provision banning the sale of cigarettes and tobacco products to minors, the same is not implemented in Bangalore as shops are selling tobacco products to minors and there are cigarette shops around most educational institutions. The Government has an important responsibility to protect children and young people from smoking. Such non-implementation not only amounts to a clear violation of the COTPA, but also the violation of the right to life and health of minors guaranteed under Article 21 of the constitution. In order to effectively

implement the COTPA provisions banning sale of tobacco products to minors and to implement the international obligations under the Framework Convention on Tobacco Control 2003 ratified by India, this petition has been filed.

ARRAY OF PARTIES

2. The Petitioner is the Cancer Patients Aid Association (“CPAA”). The Cancer Patients Aid Association (CPAA) is a registered charitable non-governmental organization working towards the Total Management of Cancer as a disease, which includes: (a.) Spreading awareness on the dangers inherent in accepted social practices such as smoking and chewing of tobacco, early marriage, multiple pregnancies, etc, which are responsible for approximately 70% of cancers in India; (b.) initiating steps for the early detection of cancer (c.) providing complete assistance to cancer patients beyond that given by the medical profession, that is, taking a holistic approach and not attacking the malignancy in isolation. Established in 1969, the CPAA has a tradition of untiring service to needy cancer patients from all over India, and even neighboring Bangladesh, Bhutan, Nepal and Pakistan. CPAA is an empathetic, reassuring, non-medical presence that has supported the treatment and overall needs of more than 40,000 cancer patients. CPAA has a presence in Mumbai, New Delhi, Bangalore and Pune.

3. Confronted with the vast problem of tobacco usage and its social acceptability, the CPAA has taken up an active anti-smoking campaign to focus attention on preventing young people from taking up the habit. CPAA has therefore adopted a two-pronged approach. On the one hand, in a massive drive covering at least several schools in India, CPAA is educating children in Standards 8, 9 and 10 on the dangers of tobacco dependency. At the same time, a series of advertisements are being visualized to educate adults on the harms of smokeless tobacco and

advising them not to introduce their children to the habit. The Petitioner is represented by its Chairman and Founding Member.

(A Copy the resolution authorizing the Chairman to institute the present proceedings is annexed herein and annexed as **ANNEXURE –A**)

4. The Respondent No. 1 is the State Department of Health and Family Welfare, represented by its Principal Secretary. The State Department is responsible for the framing and functioning of all health programmes and for managing tobacco control at the State level. This Department of Health and Family Welfare is responsible for designing and facilitating the enactment and enforcement of the COPTPA in the State of Karnataka.

5. The Respondent No.2 is the Anti-Tobacco Cell set up for the state of Karnataka. The Secretary to Government of India, Ministry of Health and family Welfare, New Delhi, under the provisions of the COTPA has requested the State Government to constitute an Anti-Tobacco cell for ensuring effective implementation of the Act and Rules. In pursuance to this direction, the State Government constituted the Anti-Tobacco cell vide Government Order dated 28.07.2004, bearing No. HFW 73 SMM 2004, Bangalore. The Cell has 11 members and is headed by the Chairperson who is the Principal Secretary to Government of Karnataka, Department of health and family Welfare, Bangalore.

(A copy of the Government Order dated 28.07.2004, bearing No. HFW 73 SMM 2004, Bangalore is annexed herein and is marked as **ANNEXURE – B**)

6. The Respondent No 3 is the State Department of Pre-University Education, represented by its Commissioner, 18TH Cross-, Mallechwaram, Sampige Road Bangalore. The Department of Pre-University education is an independent Department within the State Government dealing with 1st and 2nd year pre university courses (11th and 12th) standards. All the

colleges offering pre-university education in the State come under the control of this Department. This Department would therefore also be responsible to ensure and monitor that there is no sale of tobacco products within 100 yards of any pre-university college in Bangalore, as required under Section 6 of COTPA.

7. The Respondent No.4 is the State Education Department (Primary and Secondary Education). This department oversees the Primary, Secondary, Pre University, Vocational, Adult Education, Public Libraries, Printing Stationery and Publications. This department would also be responsible for ensuring that there is no sale of cigarettes and other tobacco products to minors within 100 yards of any school in Bangalore.
8. The Respondent No.5 is the Bruhat Bangalore Mahanagara Palike, which gives permissions and licenses to all shops and establishments in Bangalore, where tobacco products are sold.
9. The Respondent No.6 is the Commissioner of Police, who is the head of police in the State and in the City of Bangalore. Under the COTPA, the enforcement mechanism for search, seizures and raids in to be carried out under the supervision of the Respondent No.6.

Brief facts:

10. Tobacco is the second major cause of death in the world. The use of tobacco kills 5.4 million people worldwide in a year from lung cancer, heart diseases, tuberculosis and other illnesses and every fifth person dying of tobacco related causes is an Indian. Tobacco use is a risk factor for six of the eight leading causes of deaths in the world. In India alone, smoking causes 700,000 deaths per year.

11. It is a well established and accepted fact that tobacco use causes various diseases including vascular diseases such as coronary heart disease, stroke and sub-clinical arteriosclerosis, respiratory diseases such as chronic obstructive pulmonary disease and pneumonia, adverse reproductive effects and cancer. These facts have been established in the Report on Tobacco Control in India supported by the Ministry of Health and Family Welfare, Government of India, the World Health Organization and the Centre for Disease Control and Prevention, USA in 2004. According to this study, it is predicted that India will have the fastest rate of rise in deaths attributable to tobacco in first two decades of the 21st century.
12. Various other Indian studies have also recognized tobacco use as a major health hazard in India. India's unique multi-pronged problem exists since tobacco is used for smoking as well as in smokeless forms. Smoking of tobacco is mainly in the form of beedi, followed by cigarette, hookah, chillum, chutta, etc. The habit of using tobacco in smokeless forms such as gutkha and snuff is equally common. An association between smokeless tobacco and cancers of the oral cavity, pharynx, larynx and esophagus, and precancerous lesion of oral cavity has been observed by different studies and surveys.
13. It is submitted that children in India experiment with tobacco at an early age if tobacco is available to them and become addicted thereafter. Individuals who use tobacco from a young age are more likely to suffer from serious diseases earlier than others and die prematurely. Many harmful diseases can be seen at a younger age among people who start using smokeless tobacco in childhood or early adulthood. Every day 2500 Indians die by use of tobacco and most of them killed are children and teenagers.

14. A report "Tobacco Control in Schools in India" based on the findings of the India Global Youth Tobacco Survey (GYTS 2006) prepared by Dr. Dharendra Narain Sinha and supported by the Ministry of Health and Welfare, Government of India highlights a very serious concern regarding increase in tobacco prevalence in the 13-15 years age group. The GYTS 2006 was undertaken region wise namely North, South, East, West, Central and North East. Altogether 12,086 students from 180 schools in 2006 were interviewed. Data from GYTS 2003 and GYTS 2006 was analyzed to examine the change in different variables of tobacco control measures for monitoring and evaluation of process measures achieved on different provisions of COTPA and relevant Articles in the Framework Convention on Tobacco Control. It was observed in this Report that:

- a. Around 14.1 % of students in the 13-15 age group currently use tobacco.
- b. All over consumption of tobacco has not decreased over the last three years.
- c. Sale of tobacco and tobacco products to minors does not show any decline over the last three years.
- d. Teaching in schools on dangers of smoking has not improved.
- e. In the South, around 12.7 % of students in the 13-15 years age group were offered free samples of cigarettes by the tobacco industry.

(The copy of the Report on "Tobacco Control in Schools in India (India Global Youth Tobacco Survey & Global School Personnel Survey, 2006) is annexed herein and marked as **ANNEXURE-C**)

15. The above-mentioned Report also made another survey namely the Global School Personnel Survey, 2006. This survey was also undertaken region wise namely North, South, East, West, Central and North East and 2,926 school personnel from 180 schools participated in this survey. From this survey it was observed that:

- a. An alarming proportion of over one-third of school personnel and staff used tobacco.
- b. The majority of school personnel stated that they should receive specific training to help students avoid or stop using tobacco.
- c. Tobacco-free school policy (over two-thirds), teaching materials (over two-thirds) and training among school personnel (over three-fifths) underscore school tobacco control education in India.

16. To understand the extent and pattern of tobacco use among pre-university students in Bangalore, Dr. Upendra M. Bhojani from the Institute of Public Health (IPH) and Visiting Fellow at the Institute for Social and Economic Change (ISEC), Bangalore, recently conducted a study in Bangalore city. This study titled 'Study of Tobacco use and Perceptions about Tobacco use and Related Factors among the Pre-University Students in Bangalore City' attempted to assess the forms and patterns of tobacco use, factors influencing initiation, continuation, cessation of tobacco use and knowledge and attitudes of students regarding tobacco use. This study also attempted to assess implementation of selected provisions of COTPA. The students in the 11th and 12th grades (pre-university) studying in all types of pre-university colleges within Bangalore north and Bangalore south were considered for this study. The main findings of this study were:

- a. 15.1% students had tried tobacco atleast once at some point of time in their life;
- b. Among the current tobacco users, smoking was the most common form (90.12%) followed by chewing (32.1%) and tobacco application (28.4%)
- c. More than 30% students reported that their teachers were using tobacco;
- d. More than 50% of students said that non-teaching staff (drivers, clerks etc) at their PUCs was using tobacco;

- e. Those who were below 18 years of age, 59.2% purchased their tobacco products directly from the tobacco seller/vendor;
- f. It is also seen that of all the 19 Pre-University colleges included in the study, 18 colleges had one or more tobacco selling points within 100 yards of their campuses.
- g. 50.5% students didn't know whether Tobacco Control Policies exist in their colleges.
- h. There are no explicit policies including for students and school personnel prohibiting tobacco use at school premises to create tobacco free environment.
- i. Regarding tobacco related education in schools, only 34.4% of students said that they were taught about harms of tobacco use in last one year.
- j. Though some educational institutions are delivering education on tobacco related issues to student, at large, such activities have remained voluntary and have not been made part of curriculum.

(A copy of the Draft Report titled 'Study of Tobacco use and Perceptions about Tobacco use and Related Factors among the Pre-University Students in Bangalore City' is annexed herein and is marked as **ANNEXURE - D**)

(A copy of the newspaper article reporting on the IPH Study in Bangalore in the Hindu Newspaper dated 18.2.2009 is annexed herein and is marked as **ANNEXURE – E**)

17. A similar survey on the prevalence of smoking and the use of smokeless tobacco among college students in Bangalore, was conducted by S.S.Hiremath, Dean and Director of Government Dental College and Research Institute. This survey covering 2,400 students in Bangalore City revealed that 69.55% boys and 30.4% girls used tobacco. As per this survey, colleges did not have any classes or special groups to create

awareness about the ill effects of tobacco. This survey was reported in the Times Of India newspaper on 25 February 2009.

(A copy of the news report, “Chew or Sniff, Tobacco will Kill” in the Times of India, dated 25.2.2009, Bangalore, is annexed herein and marked as **ANNEXURE-F)**

18. The tobacco industry glamorizes tobacco use through direct and indirect advertisements using movie stars and while doing so the tobacco industries aggressively target young people and adults, as marketing strategies in developing countries like India. Direct and indirect advertising of tobacco attracts new smokers, most commonly from among the ranks of the young. Adolescents exposed to high pervasiveness of smoking in movies associate it with a perception that smoking is a normative social and stress reaction behavior. Depiction of smoking in movies and television appears to operate through promoting more favorable attitudes towards smoking even among never-smokers. As per the study conducted by the Dr. Upendra M. Bhojani as mentioned above, some of the reasons for using tobacco products included, style or fashion. The study also states that 18% of boys and 6.1% of girls said that they feel like using tobacco when they see movie stars using tobacco.

The Law:

19. In order to protect the non-smoking public, including minors, from the hazards of passive smoking, the Karnataka Government enacted “The Karnataka Prohibition of Smoking and Protection of Health of Non Smoker Act 2001”. This was an Act to prohibit smoking in places of public work or use and in public service vehicles and for the protection of health of non-smokers. The main provisions of this Act which relate to smoking within educational institutions and sale of cigarettes to minors are as follows:

Sec. 2 (c) defines “Place of public work or use as including educational institutions.

Sec. 3: Prohibition of smoking, advertisement, sale and storage of smoking substances-No person shall-

- 1) Engage in smoking in any place of public work or use, where smoking is prohibited and such prohibition is displayed or conveyed through any audio or visual medium, or in any Public Services Vehicle;**
- 2) Notwithstanding anything contrary contained in any other law advertise in public work or use or in any public service vehicle to promote smoking or sale of cigarettes and beedis:**
- 3) Sell cigarette, beedis or any other smoking substances to any other person who is below the age of eighteen years;**
- 4) himself or by any person on his behalf, store, sell or distribute cigarette or beedis or any other smoking substance within the premises of any Hospital, Health Institute, Public Office, Court, Library, College, School or other Educational Institution and Place of Worship.**

Section 4: Notice to displayed-for purpose of clause (1) of Section 3, the owner or Manager or person in charge of a place of public work or use shall display or convey through audio or visual medium in Kannada and English languages a conspicuous place or places in premises of place of public work or use prominently stating that the entire place or such part of it is a “No smoking zone” and that Smoking is prohibited in such place or, as the case may be, part of it”.

(A copy of The Karnataka Prohibition of Smoking and Protection of Health of Non Smoker Act 2001 is annexed herein and is marked as **ANNEXURE – G)**

20. In 2003, the Government of India enacted ‘The Cigarette and other Tobacco Products (Prohibitions of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 (“COTPA”).

The salient feature of this legislation included a total ban on direct and indirect advertisements of all tobacco products, prohibition on sponsorship of sports and cultural events, which encourage tobacco use, ban on smoking in public places and a ban on sale of tobacco products to minors. The salient features of COTPA which relate to children and minors are as follows:

Section 3 (1) of COTPA defines a “public place “as any place to which the public has access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centers, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are generally visited by general public but does not include any open space.

Section 4: No person shall smoke in any public place:

Section 6: “No person shall sale, offer for sale, or permit sale of, cigarette or any other tobacco product:

- a. To any person who is under eighteen years of age, and***
- b. In an area within a radius of one hundred yards of any educational institution.”***

(A copy of the COTPA is annexed herein and is marked as **ANNEXURE -**

H)

21. The above mentioned provisions of COTPA therefore clearly ban smoking by any person within the premises of educational institutions and prohibit the sale of cigarettes or tobacco products to a person below the age of eighteen years of age and sale of tobacco products within 100 yards of educational institutions. Any violation of the provisions of Section 4 and 6 shall be punishable under Section 24 of the COTPA with a fine, which may extend to Rs.200/- (Rupees Two Hundred only). Under Section 25 of

COTPA the Central Government may appoint one or two more persons who shall be public servants and would be responsible to take action under Section 4 and 6 of this Act.

22. For implementation of the provisions of COTPA related to minors, the Central Government made rules vide Notification bearing GSR 137 dated 25.02.2004 published in Gazette of India. Vide this Notification: Rule 5 stated as follows:

5. Prohibition of sale to minors -

- 1) The owner or the manager or the in-charge of the affairs of the place where cigarettes and other tobacco product are sold shall display a board of minimum size of sixty centimeters by thirty centimeters at conspicuous place(s) containing the warning “Sale of tobacco products to a person under the age of eighteen years is punishable offence”, in Indian language(s) as applicable.**
- 2) The onus of proof that the buyer of the tobacco products is not a minor lies with the seller of the tobacco products. The seller, in case of doubts, may request tobacco purchaser to provide appropriate evidence of having reached eighteen years of age.**

(A copy of the Notification bearing GSR 137 dated 25.02.2004 is annexed herein and is marked as **ANNEXURE - J**)

23. Following this, additional rules were notified vide Notification bearing GSR 561 (E) dated 1st September 2004 for implementation of Section 6 (b) of the COTPA. These Rules state as follows:

Rule 2(b) defined educational institution as follows:

- (b) “Educational Institution” means places/centers where educational instructions are imparted according to the specific norms and includes schools, colleges and institutions of higher learning established or recognized by appropriate authority;**

3. Prohibition of sale of cigarettes and other tobacco products around educational institutions.

- 1) Display of board-** The owner or manager or any persons in-charge of affairs of the educational institution shall display and exhibit a board at a conspicuous place(s) outside the premises, prominently stating that sale of cigarettes and other tobacco products in an area within a radius of one hundred yards of the educational institution is strictly prohibited and that it is an offence punishable with the fine which may extend to two hundred rupees.
- 2) Measurement of Distance-Distance of one hundred yards shall be measured radially starting from the outer limit of boundary wall, fence or as the case may be, of the educational institution.**

(A copy of the Notification bearing GSR 561 (E) dated 1st September 2004 is annexed herein and is marked as **ANNEXURE - K**)

24. Thereafter Rules dated 31ST May 2005 were notified by the central government which required that in order to prevent easy access of tobacco products to minors, the vendors shall not display cigarette packets and tobacco products where they would be visible. These rules also required that no person under the age of eighteen years should be involved in the handling or selling of tobacco products.

(A copy of the Notification bearing G.S.R.345 dated 31ST May 2005 is annexed herein and is marked as **ANNEXURE - L**)

Prevention - Reducing Availability of Tobacco Products to Young People:

25. One of the main ways in which the COTPA aims to protect young people and children from smoking is by reducing availability of cigarettes and tobacco products to them. In order to restrict access to tobacco products

all the provisions as detailed above, have been included in the law, such as:

- a. Ban of sale of cigarettes and tobacco products to minors. It is the responsibility of the vendor that the purchaser is above eighteen years of age. If the vendor is not sure, then he/she can ask the purchaser for age proof;
- b. Ban on display of tobacco products in stores – they should be stored instead in shelves where they would not be visible;
- c. No sale of cigarettes and tobacco products within 100 yards of educational institutions;
- d. All vendors to display boards with the warning that “Sale of cigarettes and tobacco products to minors is an offence”
- e. Ban on sale of loose cigarettes. Cigarettes and tobacco products should only be sold in their packaging;
- f. Punishments for those who violate any of these provisions

26. All the studies discussed above show that the above requirements of the law, to restrict access of cigarettes and tobacco products to minors are not being strictly complied with in Bangalore. The biggest issue of concern is that in Bangalore city there are several vendors who sell cigarettes and tobacco products in the vicinity of 100 yards of schools and colleges, which is prohibited under Section 6 of COTPA. The study by Dr. Bhojani confirms this, as also other recent news reports in the local newspapers. It was reported by the Deccan Herald that several colleges and schools such as Sophia High School and Seshadripuram Pre-University College, among others, had vendors selling tobacco products within 100 yards and the authorities had done nothing about it.

(A copy of the news report titled “Miss Nicotine rules near schools” in the Deccan Herald Newspaper, online version dated 5.11.2007, is annexed herein and is marked as **ANNEXURE - M)**

27. The second most pressing concern is that vendors are also routinely violating the law by selling cigarettes and tobacco products to persons under 18 years of age, displaying products on shelves, not checking their age-proof, not putting up warning boards stating that sale of tobacco to minors is an offence and also selling loose cigarettes. All the above studies show that it is indeed a fact in Bangalore show that all vendors sell loose cigarettes. As buying an entire packet would cost more and buying loose cigarettes is very cheap, students prefer loose cigarettes. Such sale of loose cigarettes increases access of cigarettes to young people and makes it easy for them to take to smoking. These studies also report that warning board displays are not put up at all shops selling cigarettes and other tobacco products.

28. It is submitted that one way in which all these provisions of COTPA can be effectively monitored and regulated is by introducing a positive licensing scheme for all tobacco retailers. If under age smoking is to be seriously tackled, then there has to be greater enforcement of the existing laws such as COTPA and the Karnataka Act, than is currently taking place.

29. Tobacco sales licensing schemes have been successfully introduced in a number of countries, notably the United States, Singapore, Canada and Australia. The United Kingdom and Scotland are currently proposing to introduce a licensing scheme for tobacco. Trials have shown that tobacco licensing, when backed with active enforcement activity can have a dramatic impact on retailer compliance with minimum purchase age laws. (A copy of the Consultation Report on the Proposed Tobacco Sales Licensing (Scotland) Bill titled "Smoking and the Bandits: Tackling Rogue Traders and Under-Age Tobacco Sales" November 2007 is annexed herein and is marked as **ANNEXURE - N**)

30. That presently, anyone can sell tobacco, almost anywhere in Bangalore, in a shop or even on the street. Due to this, cigarettes and tobacco products are being sold without any check to minors, in loose forms and outside educational establishments. All these activities are completely unregulated. Thus it is required that for proper implementation of COTPA, there is proper regulation of the manner in which cigarettes and other tobacco products are sold. One method could be by selling tobacco only through licensed vendors, who are issued a license by the Respondent No. 5 BBMP along with their regular license under the Karnataka Shops and Establishments Act 1961. A small license fee can be levied by the licensing authority. This will enable the Respondent No. 5 BBMP to regulate the ban on sale of tobacco to minors. This would result in better enforcement of the COTPA as all those vendors who violate these provisions, can face the risk of having their licenses cancelled.

31. It is suggested that licensing would reduce the number of vendors and retail outlets which would sell tobacco products, and that a licensing scheme might encourage retailers where tobacco is a small part of turnover to opt out of selling tobacco altogether. By introducing a licensing scheme for tobacco, the Respondent No.5 BBMP would have a register which would also help local authorities determine who was a legitimate trader and would help stamp out illicit trade.

Protection - Reducing Children's Exposure to Second-Hand Smoke in Educational Institutions

32. Another important provision in the COTPA is under Section 4, a complete ban on smoking in public places, which includes by definition, educational institutions. This ban is with the clear intention to protect children and the youth from exposure to second hand smoke. However, the studies conducted in Bangalore reveal that despite a ban, an alarming rate of smoking is prevalent among school staff and personnel.

33. Not only is such smoking within educational institutions exposing children to second hand smoke, it also sends wrong messages to children and the youth about smoking.
34. It is submitted that school personnel serve as role models for students, conveyors of tobacco prevention curricula, and key opinion- leaders for school tobacco control policies. These individuals have daily interaction with students and thus represent an influential group for tobacco control. They need to have access to prevention and learning materials and formal training to prevent tobacco use amongst youth.
35. Presently, there is no evidence that any strong tobacco control policies are in place in all educational institutions, or if such policies and modules are part of the curricula.
36. It is submitted that in 2006 the Government of India launched a National Tobacco Control Programme. One of the main strategies of this programme was to establish district level Anti-tobacco cells which in turn will carry out school based activities along with other tasks to raise awareness about tobacco related issues among children and youth.
37. Though Karnataka has had an Anti-Tobacco Cell since three years, not much had been done to promote smoke free environment in schools and educational institutions and also to stop the sale of tobacco products to minors. The State Anti Tobacco Cell was constituted and it is responsible to organize training for various groups, anti-tobacco initiations in schools and colleges and monitoring the implementation of laws related to tobacco control including ban on smoking in public places and sale of tobacco products in designated areas.

38. The Petitioner submits there has been a lack of co-ordination between enforcing authorities in implementation of the COTPA with regard to minors and collecting fines. Implementing agencies do not know about procedures or systems under the COTPA. It has been reported that there is confusion between the various departments and implementing agencies do not know where to even deposit the fine collected. In the span of three years, the enforcing authorities did not challan any of the multiple shops and/or temporary establishments near educational institutions which sell tobacco production to minors under Section 24 of COTPA or fine the educational institutions for not putting up the warnings and taking action against their staff who smoke. Such inaction has also been highlighted in several press reports.

(A copy of the news report in Deccan Herald Newspaper dated 07.02.2009 is annexed herein and is marked as **ANNEXURE – P**)

(A copy of the report in Express Buzz dated 07.02.2009 is annexed herein and is marked as **ANNEXURE – Q**)

39. Therefore from the above studies and news paper reports, it is evident that that there is no proper implementation of the provisions of the COTPA relating to minors, specifically Section 3, 4 and Section 6, in Bangalore city, by the Respondent authorities. There is sufficient evidence from the various studies relating to students in Bangalore that despite having a Karnataka law and a national legislation being COTPA, tobacco use among the children and youth in Bangalore has remained quite high. The Petitioner has thus filed this public interest petition seeking strict implementation of the existing laws and regulations of the COTPA specifically Section 4 and Section 6 which relate to minors and effective systems for monitoring the implementation of the COTPA.

40. The Petitioner has no other efficacious alternative remedy but to approach this Hon'ble Court and has filed this petition on the following grounds. The

Petitioner has not filed any other Petition arising out the same cause of action in this Hon'ble Court.

41. GROUNDS:

- A. **THAT** the non-implementation of the COTPA in relation to enforcement of the ban of sale of cigarettes and tobacco products to minors and the sale of tobacco in the vicinity of educational institutions, amounts to a clear violation of the statutory provisions and the right to life and health protected under Articles 21 and 47 of the constitution.
- B. **THAT** the right to health is implicit in the right to life and liberty granted to the citizens of this country under Article 21 of the Constitution. The scope and the ambit of the right to health came up for consideration before the Hon'ble Supreme Court in the matter of *Murali Deora v. Union of India* in year 2001, (2001, 8 SCC 756,768) and the Supreme Court held that the Fundamental right guaranteed under Article 21 of the Constitution of India, inter alia, provides that no one shall be deprived of his life without due process of law and that a non smoker cannot be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places. Such exposure of non-smokers to passive smoking indirectly deprived them of their life without any process of law. Thus, there is a clear need to enforce the provisions of the COTPA to ensure that minors are not exposed to second hand smoke both inside and within 100 yards of educational institutions.
- C. **THAT** the right to health under article 21 was considered by the Hon'ble High Court of Kerala in the matter of *K. Ramkrishnan and Another v. State of Kerala and Others* AIR 1999 Ker 385. The Court held that: "the continued omission and inaction on the part of the respondents to comply with the constitutional mandate to protect life and to recognize the inviolability of dignity of man and their refusal to countenance the baneful

consequences of smoking on public at large has resulted in extreme hardship and injury to the citizens and amounts to a negation of their constitutional guarantee of decent living as provide under Article 21 of the Constitution of India.” Therefore, the non-implementation by the Respondent authorities of the ban on smoking in educational institutions as per the provisions of Section 4 of COTPA, not only amounts to a statutory violation, but also a violation of the right to health of the students and minors in such educational institutions who are exposed to second hand smoke.

D. THAT due to harmful effects caused by the use of tobacco on the health of children and further due to the rising use of tobacco by children as established above, Section 6 of the COTPA should be enforced appropriately and effectively. Minors have been severely affected by tobacco use, as a result of which they face the threat of deadly diseases such as cancer, thereby affecting their mortality rate. This contravenes the duty of the State to take measures to increase the level of nutrition and health and to improve the standard of living of the people as required in Article 47 of the constitution and deserves the intervention of this Hon'ble Court.

E. THAT under Article 47 of the Constitution it is the duty of the Respondent authorities to raise the level of nutrition and the standard of living and improve public health as among its primary duties. The Respondents are responsible in banning the sale of cigarettes and tobacco products to minors and the sale of tobacco in the vicinity of educational institutions, and the ban on smoking in schools and colleges under their constitutional obligation improve public Health as among its primary duties under Article 47 of the constitution.

F. **THAT** the right to health of minors is violated, regularly and consistently, with impunity by the State in not enforcing the comprehensive statute on the subject, i.e., COTPA. From the various studies done in Bangalore related to use of tobacco in minors, it is evident that there is gross violation of the ban on sale of tobacco products to minors and the sale of tobacco products within 100 yards of educational institutions in Bangalore. The study titled 'Study of Tobacco use and Perceptions about Tobacco use and Related Factors among the Pre-University Students in Bangalore City' by Dr. Upendra M. Bhojani clearly states that in at least 17 pre-university colleges that they inspected, there were vendors selling tobacco products within 100 yards of the institutions. Thus it is clear that the Respondent authorities are neither taking stringent action on the implementation of the provisions of Section 6 (b) of the COTPA, nor are they taking any actions against the heads of the educational institutions who are not taking steps to enforce this ban on sales outside their institutions. Such non-implementation of the law amounts to a serious violation of the right to health of students.

G. **THAT** the COTPA was enacted with the purpose of discouraging the use of or consumption of tobacco products and lays down several restrictions on the sale of cigarettes and tobacco products to ensure that they are not sold to persons below 18 years. Such restrictions on the ban of sale of tobacco to minors, the requirement that tobacco products should not be displayed, that there should not be any sales of tobacco products within 100 yards of an educational institution and that every vendor selling tobacco should display a warning that sale to minors is an offence, are being routinely violated in Bangalore. Such violation of the provisions of COTPA relating to minors is due to the lack of action on the part of the Respondent authorities in not enforcing the law stringently. Such violation therefore deserves the interference of this Hon'ble Court.

H. **THAT** it is clear from all the studies produced above that there is improper functioning and incompetency on the part of enforcing authorities to implement the COTPA. The powers granted to the enforcing authorities under the provisions of COTPA are not utilized and this reflects a grave failure on the part of the Respondent Government to implement the Act. Section 12 of the COTPA gives the enforcement officers the power of entry and search. Section 13 empowers for seizure all these are to be carried out in accordance with procedure mentioned in CrPC. There is also serious non-compliance with the obligations contained in Section 12, 13 and 24 and 25 of COTPA by enforcing authorities. Such non-enforcement of the law deserves the interference of this Hon'ble Court.

I. **THAT** the Respondent authorities are to strictly implement all provisions relating to ban of sale of tobacco products to minors also under India's obligation under the Framework Convention on Tobacco Control ("FCTC") 2003. Article 16 of the FCTC provides that each party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sale of tobacco products to person under the age set by domestic law, national law is 18. Article 16 also states that such measures may include:

- a) Requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and in case of doubt, request that each purchase provide appropriate evidence of having reached full legal age,
- b) Banning the sale of tobacco products in any manner by which they are directly accessible such as store shelves,
- c) Each party shall endeavor to prohibit the sale of cigarette individually or in small packets which increase the affordability of such products to minors.

The Respondent authorities are not complying with these mandatory international treaty obligations of the FCTC despite India having ratified it, and this deserves the interference of this Hon'ble Court.

42. GROUNDS FOR INTERIM RELIEF

- A. It is submitted that the COTPA is already in force and Section 4 and section 6 of the COTPA clearly mandate that there should be no smoking inside educational institutions nor should there be any sales of tobacco within a radius of 100 meters of any educational institutions.
- B. However, all these requirements of the COTPA are being violated in Bangalore city and this has been shown in the various studies. Therefore it is crucial that immediate interim orders are passed directing the Respondents to ensure implementation of Section 4 and 6 in educational institutions. If such interim orders are not granted, there will continue to be sales of tobacco products right outside educational institutions, thus affecting the right to health of children and minors. This is a requirement of the law, and therefore there can be no objections from the respondents to such interim orders.

PRAYER

WHEREFORE in light of the above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:

- A. Direct the Respondent No. 3 and Respondent No. 4 State Departments to take immediate action by directing all heads of educational institutions in Bangalore city to strictly implement Section 6 (b) of COTPA by ensuring that there is no sale of cigarettes or tobacco products within 100 yards of the institution, and to exhibit a board at a conspicuous place outside their

premises stating that sale of tobacco within 100 yards is prohibited and that it is a punishable offence. The Respondent No.3 and 4 State Departments should also be directed to submit an Action Taken Report to this Hon'ble Court as to the action taken by them to implement these directions;

- B. Direct the Respondents Nos. 1, 2, 3 and 4 to pass appropriate orders directing that teachers and staff in all educational institutions cannot smoke within the premises.

- C. Direct the Respondent No. 5 Bruhat Bangalore Mahanagara Palike and Respondent No.6 to make an inspection and report to this Hon'ble Court as to whether all vendors of cigarettes and tobacco products are selling cigarettes to minors, selling cigarettes and beedies loose, without their packaging, whether the cigarettes are displayed on shelves and if have displayed outside their shop a board of minimum 60 cms. X 30 cms. containing the warning that "Sale of Tobacco products to a person under the age of 18 years is a punishable offence",. If such statutory requirements of COTPA are not being complied with, then direct Respondents Nos. 5 and 6 to report as to what action has been taken by them against the violators.

- D. Direct the Respondents to form a city-level committee consisting of health department officials of the Respondent No.5 BBMP, the Respondent No.6 Police and members of the Respondent No. 3 State Anti-Tobacco Cell, to take up a drive to inspect all kiosks, shops and even restaurants selling tobacco products near schools and educational institutions in Bangalore city and report on its action taken against the violators of COTPA.

E. Direct the Respondent No. 5 Bruhat Bangalore Mahanagara Palike to make required rules for regulating vendors of tobacco products. Such Rules should include the following requirements of COTPA:

(i) that no sale of cigarettes and tobacco products would be made to a person under 18 years of age and upon producing age proof;

(ii) that no cigarettes and other tobacco products shall be sold-off-the shelf or displayed in such a way that they are visible, so as to prevent easy access of tobacco products to persons below the age of eighteen years.

(iii) that every licensed vendor of tobacco products should display a board of 60 cms. X 30 cms. at point of sale containing the warning that "Sale of Tobacco products to a person under the age of 18 years is a punishable offence".

(iv) That no vendor shall sell tobacco products within 100 yards of an educational institution.

(v) That the owner or manager of the place where tobacco is sold shall ensure that no tobacco product is handled by or sold by a person below the age of eighteen years;

F. Direct the Respondent No. 3 and 4 State Departments of Pre-University Education and Department of Primary and High School Education to design and include within the curricula of primary, high school and pre-university courses, a mandatory course on the dangers of tobacco use and give the teachers proper training on such courses;

G. Direct the Respondent No. 3 and 4 State Departments of Pre-University Education and Department of Primary and High School Education to conduct awareness programmes within schools and pre-university colleges in Bangalore city for the implementation of the ban of smoking of school staff and personnel within the school premises and Section 4 and 6 of the COTPA;

- H. Direct the Respondents to ensure public awareness about the ban on smoking in educational institutions and ban of sale of cigarettes and tobacco products to minors, through mass scale advertising and awareness programmes/campaigns and to specifically carry out Youth-oriented marketing of the prevention message developing in consultation with young people;
- I. To issue writ or appropriate orders directing Respondent 2 to establish a effective Monitoring Committee, so as to monitor the enforcement and implementation of laws related to ban on smoking guidelines preventing sale of tobacco within 100 meters of the school.
- J. Direct the Respondent No.1 State Department to disseminate proper information to the enforcing authorities to make them aware of the provisions of COTPA such as ban on smoking in public places, ban on sale of tobacco products within 100 yards of educational institutions, and ban of such products to minors in order to ensure effective enforcement.
- K. Direct the Respondent No.1 State Government to put in place new reporting mechanisms for reporting violations of the provisions of the COTPA such as a toll-free helpline number or an online complaint system;
- L. Pass any order as this Hon'ble Court deems fit in the facts and circumstances of this case in the interest of justice and equity.

INTERIM PRAYER

That pending the disposal of this petition, it is prayed that this Hon'ble Court may be pleased to pass an interim order direct the Respondent No. 3 and

Respondent No. 4 State Departments to immediately direct all heads of educational institutions in Bangalore city to strictly implement Section 6 (b) of COTPA by ensuring that there is no sale of cigarettes or tobacco products within 100 yards of the institution, and to exhibit a board at a conspicuous place outside their premises stating that sale of tobacco within 100 yards is prohibited and that it is a punishable offence and to pass appropriate orders directing that teachers and staff in all educational institutions cannot smoke within the premises.

Place: Bangalore

Date:

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