

IN THE COURT OF THE HON'BLE HIGH COURT OF KARNATAKA

AT BANGALORE

W. P. No. 78378 - 78380 / 2013

I. A. No..... / 2013

BETWEEN:

Ghodawat Pan Masala Products (I) Pvt. Ltd.

And Others

PETITIONERS

AND

Union of India and Others

RESPONDENTS

Impleading Applicant:

The Cancer Patients Aid Association

A registered Society

Having its registered office at 5, Malhotra House

Opposite GPO

Mumbai - 400001

Represented by its Chairman and Founding Member

Mr. Jagendra Sapru

APPLICATION UNDER ORDER 1, RULE 10(2) & SECTION 151 OF CODE OF CIVIL

PROCEDURE, 1908, R/W ARTICLES 226 AND 227 OF THE CONSTITUTION

The Applicant most respectfully submits as follows:

1. The present Application has been made by the Applicant Association "Cancer Patients Aid Association" ("CPAA") seeking to implead itself as a Respondent / Intervenor in the instant Writ Petition.

2. The address of the Applicant for the purposes of court notices and processes is that of its Counsels Ms. Jayna Kothari, D6, Dona Cynthia Apartments, 35, Banner Road, Bangalore - 560 025.

3. It is submitted that the Applicant is a registered charitable society towards the total management of cancer as a disease. Their work in this includes:

- (a) Spreading awareness on the dangers inherent in accepted practises such as smoking and chewing of tobacco, early marriage pregnancies, etc. which are responsible for approximately 70% of cancer 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 treating malignancy in isolation

4. Established in 1969, the CPAA has a tradition of providing unfailing support to needy cancer patients from all over India. CPAA has a presence in all states and supported the treatment and overall needs of more than 40,000 cancer patients. CPAA has a presence in Mumbai, New Delhi, Bangalore and Pune. The contribution of CPAA in creating awareness about the ill effects of tobacco consumption has been extensive. The association works to spread awareness about the dangers posed by tobacco in all its forms. They attempt to arrest the use of tobacco by vulnerable groups (teenagers) and periodically conduct awareness lectures about the benefits of quitting smoking dispelling ignorance. CPAA provides various cessation of tobacco usage programs such as "Quit tobacco for life" and "How to stop smoking" in order to assist smokers to stop the consumption of tobacco. It also has a presence in Bangalore. The CPAA Association is represented by its Chairperson and Founding Member, Yogendra Sapru.

5. It is submitted that gutkha and other forms of chewing tobacco products such as zarda, pan masala, gul, bajjar, etc. are banned vide Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2017 made under the Food Safety and Standards Act, 2006. It is submitted that

gutkha and its varied forms are toxic and highly addictive forms of chewing tobacco, and are known carcinogens. The alarmingly high intake of tobacco in its smoking and smoke-less forms has resulted in India having the highest number of cases of oral cancer in the world.

8. Acknowledging the devastating consequences that tobacco poses on public health and in order to give effect to the aforementioned Regulations, 25 State Governments in India and 3 Union Territories have issued Notifications banning the sale and manufacture of gutkha and pan masala in their respective states. As the Government of Karnataka did not take any step towards banning these toxic tobacco products threatening the health and welfare of the general public, the Applicant herein filed a petition in public interest seeking the implementation of the ban on gutkha and pan masala containing tobacco and nicotine being W.P. No. 23661/2012.

(A copy of the said petition being W.P. No. 23661 / 2012 is annexed herein and is marked as **ANNEXURE – A**)

9. In the said Writ Petition, M/s. Ghodawat Pan Masala Pvt. Ltd., who is one of the Petitioners herein, and several other gutkha companies filed impleading applications and got impleaded and were made parties, as they were opposing any kind of ban on gutkha and pan masala. The 1st Petitioner herein is Respondent No.7 in the said PIL.

10. Now in the present petition, as the Petitioners have challenged the Notification dated 30.05.2013 bearing No. PHI/FSSA/NOT/01/2013-14 recently issued by the State Government, banning the manufacture, sale and storage of gutkha within the entire state of Karnataka on the ground that the impugned notification is violative of the Food Safety and Standards Act 2006 and in contravention of the Constitution. The various grounds raised in this petition are as follows:

- (i) That pan masala containing tobacco is not res extra commercium under various legislations and also as per the judgment of the Supreme Court in Ghodawat pan Masala vs. UOI (2004) 7 SCC 68
- (ii) That petitioner's industry has been targeted
- (iii) That pan masala containing tobacco and gutkha are covered under CDPO which occupies the field regarding tobacco regulation and there can be no regulation of tobacco under the FSS Act
- (iv) That gutkha does not fall under the ambit of the FSS Act.
- (v) That manufacturing and trading of pan masala containing tobacco or gutkha is a fundamental right under Article 19 (1) (g) of the constitution
- (vi) That similar matters are pending in the Supreme Court
- (vii) That the impugned notification is in violation of the principles of natural justice.

9. It is submitted that presently under Regulation 2.3.4 of The Food Safety and Standards (Prohibition and Restrictions on Sale) Regulations 2011 under FSSA 2006, similar ban notifications on gutkha containing tobacco and nicotine have been issued by 25 other State Governments and Union Territories. Other States and Union Territories which have banned gutkha are as follows:

- (i) Delhi
- (ii) Maharashtra
- (iii) Tamil Nadu
- (iv) Gujarat
- (v) Uttar Pradesh
- (vi) Manipur
- (vii) Bihar
- (viii) Madhya Pradesh
- (ix) Kerala
- (x) Sikkim
- (xi) Chhattisgarh
- (xii) Punjab

- (xiii) Rajasthan
- (xiv) Jharkhand
- (xv) Haryana
- (xvi) Mizoram
- (xvii) Himachal Pradesh
- (xviii) Goa
- (xix) Dadra and Nagar Haveli
- (xx) Orissa
- (xxi) Uttarakhand
- (xxii) Andaman and Nicobar
- (xxiii) Chandigarh
- (xxiv) West Bengal
- (xxv) Assam

10. It is submitted that many of these similar notifications banning gutkha under the FSSA 2006, which are identical to the impugned notification issued by the State of Karnataka, were challenged before various other High Courts. In all these challenges, identical grounds of challenge were raised, as have been raised in this petition. There are detailed judgments of the Bombay High Court, the Kerala High Court, the Patna High Court and the MP High Court dismissing the applications seeking any interim stay of such notifications. Intentionally none of these judgements have been produced by the Petitioners in this petition before this Hon'ble Court in this matter.

(A copy of the order of the Bombay high Court in ***M/s. Dhariwal Industries Limited and Another vs. State of Maharashtra and Others*** W.P. No. 1631 / 2012 dated September 15th, 2012 is annexed herein and is marked as **ANNEXURE - B)**

(A copy of the order of the Kerala High Court in ***All Kerala Tobacco Dealers Association and Anr. Vs. State of Kerala and Others***, W.P. No. 12352 / 2012 dated 2nd August 2012 is annexed herein and is marked as **ANNEXURE - C)**

(A copy of the order of the Patna High Court in Writ Jurisdiction case No. 10297 / 2012 in ***Lal Babu Yadav vs. State of Bihar and others*** dated 10.7.2012 is annexed herein and is marked as **ANNEXURE – D**)

(A copy of the order of the Madhya Pradesh High Court in W.P. No. 3131 / 2012 dated 07.05.2012 is annexed herein and is marked as **ANNEXURE – E**)

11. In the above judgments, the other High Courts have rejected all the contentions that have been raised by the Petitioners in the present petition and held as follows:

- i. That the FSSA 2006 is the single special legislation for all food products on the subject of safety and standards, and it would not be the COTPA which would apply.
- ii. That the FSSA 2006 is a later Act and a comprehensive legislation on food safety and contains a non-obstante clause in section 89 and occupies the entire field in safety and standards of food (which include gutkha, pan masala and supari)
- iii. That pan masala and gutkha containing tobacco and nicotine posed a serious health hazard to citizens;
- iv. That although smoking tobacco is not banned, chewing tobacco is. The courts held that a ban is necessary on chewing tobacco as in the case of gutkha, the manufacturers add sweeteners and additives to make tobacco palatable and is highly addictive even to school children, students and adults.
- v. The ban on gutkha would fall under reasonable restrictions under Article 19(1)(g) read with clause 6, as it is in public interest.
- vi. That principles of natural justice were not violated

12. It is submitted that many of the above High Court orders were also challenged in the Supreme Court, and the appeals are all pending in the Supreme Court, and the Hon'ble Supreme Court is currently considering all these matters. ***There has***

Courts or by the Hon'ble Supreme Court. In fact all cases dealing with the challenges to a ban on gutkha are pending before the Hon'ble Supreme Court, and even this present petition ought to be decided with all the other petitions being considered by the Hon'ble Supreme Court. This present impugned Notification issued by the State of Karnataka was issued also in compliance with the orders of the Hon'ble Supreme Court dated 03.04.2013 directing all States which had not banned gutkha to comply with the provisions of the FSSA 2006.

(A copy of the order dated 03.04.2013 issued by the Hon'ble Supreme Court is annexed herein and is marked as **ANNEXURE – F**)

13. It is submitted that the impugned Notification has been issued bringing about a ban on gutkha and pan masala containing tobacco and nicotine, on the grounds of public health as required under the Food Safety and Standards Act 2006. This has been issued keeping in mind the harmful health effects of gutkha and pan masala which contain tobacco and nicotine. Gutkha is a highly addictive and toxic product, owing to the amount of nicotine and tobacco content in it. It is submitted that it is estimated that tobacco results in the death of over 10 lakh Indians a year. Further, around 75,000 to 80,000 new cases of oral cancer per year annually are registered in India and India currently has the highest number of oral cancer cases in the world. Areca nut or betel nut used in the preparation of gutkha is a serious health hazard and a known carcinogenic substance. Areca nut is consumed widely in India in the form of paan or supari under the mistaken belief that it is actually a mouth freshener, stress reliever or that it aids in digestion. It is submitted that areca nut is a psychostimulant and an addictive substance. Areca nut is in fact estimated to be the fourth most common addictive substance (after tobacco, alcohol and caffeine). The World Health Organisation's International Agency for Research on Cancer lists areca nut as a Group-I carcinogen. Even without adding tobacco, areca nut chewing is known to cause cancers of the larynx, stomach, lung and cervix in humans. Apart from cancer, areca nut addiction has also been found to cause heart attacks, arrhythmia, metabolic syndrome and diabetes. Thus, the adding of tobacco and nicotine in

gutkha and pan masala is highly dangerous and harmful to public health, causing cancer and other diseases to a very high extent, as per several studies done in India.

14. Thus under Article 21 of the constitution of India, the right to health has been protected as an integral part of the right to life which is a fundamental right and it is the duty of the State to ensure that the right to health of its citizens is protected. Further Article 47 casts an obligation on the State to improve public health and to endeavor to prohibit the consumption of intoxicating substances which are injurious to health. Keeping in mind these obligations and the aim of the FSSA 2006, to ensure that there is protection of public health, the impugned Notification has been issued.

15. As an organization working on cancer prevention and the improvement of public health, the Applicant herein would be a necessary and proper party, as this present matter has serious public interest implications on the right to health of the citizens of Karnataka. It is thus impleading in the interest of public health. If impleaded in this petition, would be able to assist this Hon'ble Court by bring on record all the vital studies done on chewing tobacco and the health hazards of the same, studies by the World Health Organization, and statistics showing the clear link between gutkha consumption and cancer and the public health implications of the same which would be crucial to take into consideration while deciding this matter. Such materials would not be provided by the Petitioners herein, and being an expert organization in cancer care and research, the Applicant would be able to bring on record relevant research materials on public health and chewing tobacco, which would be able to assist this Hon'ble Court in adjudicating this matter.

16. It is submitted that although this petition is filed by the Petitioners, the impugned Notification is issued in the interest of public health, and any stay or quashing of the same would have widespread and serious implications on the right to health

of the citizens of the entire State. Thus, keeping the wider public interest in mind, it would be imperative that the Applicant herein be allowed to be impleaded as a Respondent or Intervenor.

17. It is submitted that in an identical matter, the Hon'ble Bombay High Court permitted a similar public interest organization being "Action Council Against Tobacco" to be impleaded as an Intervenor in ***M/s. Dhariwal Industries Limited and Another vs. State of Maharashtra and Others*** W.P. No. 16311 / 2012 while considering challenges to identical notifications banning gutkha in Maharashtra that were filed by gutkha manufacturers and traders.

18. In these circumstances it is crucial that the Applicant herein is impleaded in the present Writ Petition as a Respondent, as a necessary and proper party as this matter has serious public health implications in the entire State, so as to enable the Applicant to place before this Hon'ble Court all the relevant interim orders of the other High Courts, the research materials on cancer and chewing tobacco which have been suppressed by the Petitioners herein and statistics, to enable this Hon'ble Court to adjudicate the matter in the interest of public health protecting the safety and right to health of the citizens of Karnataka.

19. It is submitted that no harm, loss or injury would be caused to the Petitioners if the Applicant is permitted to come on record and place all relevant facts and materials which are necessary for the proper adjudication of the controversy raised in the present Writ Petition.

PRAYER

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

A. Pass an order impleading the Applicant herein as a Respondent / Intervenor in this Writ Petition and

B. Pass any such further orders as it may deem fit in the interest of justice and equity.

Place:

Counsel for the Applicant

Date: