

(2011) 05 DEL CK 0463

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1651 of 2011

Dharampal Satyapal Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0463

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sudhir Chandra Aggarwal and Sanjai K. Pathak, for the Appellant; Atul Nanda Neeraj Chaudhari, CGSC, Khalid Arshad and Mohit Auluck, for the Respondent

Judgement

Sanjiv Khanna, J.—On 14th March, 2011, the first date of hearing, the following order was passed:

WP (C) No. 1651/2011

Heard Mr. Sudhir Chandra, learned senior counsel along with Mr. Manish Bishnoi, learned Counsel for the Petitioners and Mr. Atul Nanda, learned senior counsel along with Mr. Neeraj Chaudhary, learned Counsel for the Respondents.

Mr. Atul Nanda, learned senior counsel has raised a preliminary objection that the controversy that has been sought to be agitated in this writ petition is substantially the issue before the Apex Court and the Petitioner No. 1 is a party to the same. For the aforesaid purpose, he has referred to paragraph 6 of the application for stay. On perusal of the paragraph 6, it appears that the Petitioner No. 1 is a party to a matter pending before the Apex Court. In view of the aforesaid, we would like learned Counsel for the Petitioners to file a copy of the petition filed before the Apex Court so that this Court can appropriately be guided.

Call on 22nd March, 2011.

2. Thereafter on 28th March, 2011, the following order was passed:

CM No. 4380/2011 in WP(C) No. 1651/2011

This is an application for amendment.

In pursuance of our earlier order, the amendment application has been filed challenging the specific rule.

The amended memo has been filed. Let it be taken on record.

The application stands disposed of. WP(C) No. 1651/2011

Heard Mr. Sudhir Chandra Aggarwal, learned senior counsel along with Mr. Sanjay Kumar Pathak and Mr. Manish Bishnoi, learned Counsel for the Petitioner and Mr. Atul Nanda, learned senior counsel along with Mr. Neeraj Chaudhari, learned Counsel for the Respondent.

It is submitted by the learned Counsel for the Respondent that the challenge to the rule in question is pending before the Apex Court. He undertakes to file an affidavit to show who has challenged the rule and what is the involvement of the Petitioner in the said case. Let an affidavit in this regard be filed within three weeks hence.

Call on 26th April, 2011.

3. The Respondent has filed an affidavit in terms of the aforesaid order. Mr. Sudhir Chandra, Sr. Advocate has, however, submitted that in the present writ petition, the issue raised pertains to tobacco products or pan masala exported by the Petitioner and whether the plastic pouches can be utilized by them for exports. He submits that to this extent the relevant provisions of the Plastic Waste (Management & Handling) Rules, 2011, have been challenged. It is submitted that this issue is not pending before the Supreme Court and the issue pending before the Supreme Court pertains to the plastic pouches in which tobacco/gutkha/ pan masala are sold in India.

4. In the affidavit filed by the Respondent/Union of India, it is stated that SLP(C) No. 16308/2007 titled Ankur Gutkha v. Indian Asthma Case Society and other connected matters are pending before the Supreme Court in which the Petitioners therein have assailed the judgment dated 29th August, 2007, passed by the High Court of Rajasthan. The Respondents have enclosed therewith copy of the order dated 17th February, 2011, passed in some applications in the connected Leave to Appeal (Civil) No. 19467-19469/2007 titled Miraj Product Pvt. Ltd. v. Indian Asthma Care Society and Ors. in which reference has been made to order dated 7th December, 2010, passed by the Supreme Court giving the following directions:

Heard learned Counsel for the parties and perused the record including the affidavit of Dr. Manoranjan Hota, Director, Ministry of Environments and Forests, Government of India and documents annexed with it. Interim order dated

7.9.2007 and other similar orders passed by this Court are vacated and the following directions are given:

(1) The learned Solicitor General should instruct the concerned Ministries to approach National Institute of Public Health to undertake a comprehensive analysis and study of the contents of gutkha, tobacco, pan masala and similar articles manufactured in the country and harmful effects of consumption of such articles. The learned Solicitor General says that a report based on such study will be made available within eight weeks.

(2) The Plastics (Manufacture, Usage and Waste Management) Rules, 2009 be finalized, notified and enforced within a period of eight weeks from today.

(3) The direction contained in the impugned order of the High Court for imposition of fine shall remain stayed.

(4) Respondent Nos. 3 to 15 and other manufacturers of gutkha, tobacco, pan masala are restrained from using plastic material in the sachets of gutkha, tobacco and pan masala. This direction shall come into force with effect from 1st March, 2011.

5. A perusal of the said order shows that the Supreme Court had given a direction that the Plastic (Manufacture, Usage and Waste Management) Rules, 2009, should be finalized, notified and enforced within a period of eight weeks. Further directions have been given to Respondents 3 to 15 therein and other manufacturers of gutkha, tobacco, pan masala, not to use plastic material in the sachets of gutkha, tobacco and pan masala.

6. It is admitted that the Petitioner herein is one of the Respondents in the petitions pending before the Supreme Court.

7. The Respondent has also pointed out that writ petitions have been also filed challenging the Plastic Waste (Management & Handling) Rules, 2011, before the Supreme Court and the said writ petitions are pending. Our attention is drawn to the order dated 13th April, 2011, passed by the Supreme Court directing that all writ petitions involving the challenge to the Rules will be listed with the other batch of petitions.

8. During the course of hearing today, learned Counsel for the Respondent/Union of India, has produced before us another order of the Supreme Court dated 11th May, 2011, in Contempt Petition (C) No. 237/2011 in SLP (C) No. 16308/2007. This order refers to the order dated 7th December, 2010, passed by the Supreme Court, which has been quoted above and thereafter records as under:

On 17.2.2011, prayer made by some of the manufacturers of Gutkha, Tobacco and Pan Masala for modification of order dated 7.1.2010 was rejected. This is evident from the following extract of order dated 17.2.2011.

We have considered the submissions of Shri Ram Jethmalani and Sr. Abhishek Manu Singhvi but do not find any justification to modify order dated 7.12.2010.

Consequently, the prayer for extending the date specified in para 4 of the directions contained in that order is rejected.

Centre for Public Interest litigation through its General Secretary, Ms. Kamini Jaiswal has filed this petition under Article 12 of the Contempt of Courts Act, 1971 read with Rule 2 and Rule 3 of the Contempt Rules to regulate proceedings for contempt of Supreme Court, 1975 with a prayer that contempt proceedings be initiated against the non Petitioners for willful disobedience of the Court's Order dated 07.12.2010.

We have heard Mr. Prashant Bhushan in support of the application and perused the record. We have also seen the two pouches of the Rajnigandha Pan Masala and Tulsi Royal Chewing Tobacco which have been placed before the Court in two envelopes marked as Annexure P-2. From the dates printed on the pouches, it is clear that the same were manufactured in April, 2011.

We are, prima facie, convinced that Dharampal Satyapal Limited which is engaged in manufacturing gutkha, etc. is prima facie guilty of violating the Court's order dated 07.12.2010. Therefore, cognizance is taken against Respondent No. 1, Managing Director of DS Group.

Issue notice, to the Respondent No. 1 to show cause as to why the contempt proceedings may not be initiated against him, returnable in eight weeks.

With a view to ensure that no attempt is made by anyone to circumvent the court's order dated 7.12.2010, we make it clear that manufacturers of Gutkha, Tobacco Pan Masala shall not use plastic material in any form in any package for packing their products i.e. Gutkha Tobacco and Paan Masala. The Government of India, Ministry of Environment and all concerned agencies are directed to ensure that order dated 7.12.2010 and the directions given today are faithfully implemented by all the manufacturers through the country and any body found violating the directions of this Court shall be proceeded against in accordance with law.

So far as Dharampal Satyapal Limited is concerned, it is restrained from circulating the manufactured goods in the market.

9. In view of the aforesaid position, we do not think that it will be appropriate and proper for the Delhi High Court to entertain and examine the contentions raised by the Petitioner. The Petitioner is a party to the proceedings before the Supreme Court wherein all issues and contentions including the validity of Plastic Waste (Management & Handling) Rules, 2011 are raised. Accordingly, we are not inclined to proceed in this matter and the petition stands closed. It is open to the Petitioner to take appropriate steps as they may be advised.