courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2012) 09 AHC CK 0267

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 19126 of 2012

Indian Dental Association U.P. State and Another — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:
Constitution of India, 1950 — Article 21, 47
Food Safety and Standards Act, 2006 — Section 26, 26(1), 26(2)(v), 29(2), 30(1)

Citation : (2012) 9 ADJ 563 : (2013) 4 AWC 3585

Hon'ble Judges : Anurag Kumar, J;Amar Saran, J

Bench : Division Bench

Advocate : Vishnu Behari Tewari, for the Appellant; Abhishekh Srivastava, Brahma Nand Singh, Deepak Verma, Nikhil Agarwal and Vaibhav Kaushik, for the Respondent

Judgement

1. Heard Sri Vishnu Behari Tewari learned counsel for the petitioner, learned Advocate General for the State of U.P. and Sri Vaibhav Kaushik, learned Standing Counsel for the Union of India. Learned Standing Counsel for the Central Government has passed over three photo copies of the D.O. letters issued by the Special Secretary, Ministry of Health and Family Welfare, Union of India, New Delhi dated 8.5.2012, 27.8.2012 and 29.8.2012 which direct the State of U.P. to pass necessary orders at the State level prohibiting the sale and distribution of "Gutka" and "pan masala" containing tobacco, in the light of the provisions of the Food Safety and Standards Act 2006 (hereafter ''Food Safety Act'' or ''the Act''), Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 (hereafter regulations) which put restrictions on adding tobacco and nicotine to any food product. As learned Standing Counsel for the Union of India prays for time to file a counter affidavit annexing the said D.O. letters and other material for clarifying the stance of the Union of India, he is allowed two weeks time for this purpose.

2. However as it was mentioned in the affidavit filed by the State Government dated 10.9.2012 that the State would act according to the "Marg-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-dental-association-up-state-…

darshan" (directions) of the Central Government and as the aforesaid letters of the Central government issued through the Special Secretary, Ministry of Health and Family Welfare already sent to the State government clearly contain the necessary directions to place restrictions on the sale and distribution of "gutka" or "pan masala" containing tobacco, we see no impediment before the State for not taking suitable steps for issuing the necessary directions on this matter in the next 14 days.

3. It is worth noting that in view of the issuance of Regulation 2.3.4 at present as many as 13 States have imposed bans on the manufacture, distribution and sale of ''Gutka'' or ''pan masala'' containing tobacco. There have also been no stay orders by the High Courts of those States or the Supreme Court on the decisions of the aforesaid States to impose restrictions on this product. The High Courts of M.P., Mumbai, Kerala and Patna have already affirmed the decisions of their State governments imposing these restrictions.

4. There can hardly be any dispute that use of "gutka" and ''pan masala'' with tobacco is highly addictive and causative of oral cancer and periodontal and other diseases (including being a risk factor for strokes and cardiac arrests) and that according to the Global Adult Tobacco Survey - India (GATS) 2010 an estimated 20.6 crore Indians are using this harmful product which poses a grave health risk to our people in general and to the younger generation in particular. It is also stated that India enjoys the dubious distinction of being the oral cancer capital of the world due to the high levels of smokeless tobacco use.

5. The Right to health is a fundamental right flowing from the right to life guaranteed under Article 21 of the Constitution of India. Article 47 casts a fundamental duty on the State to improve public health, and to endeavour to prohibit consumption of intoxicating substances which are injurious to health.

6. The sincerity and commitment of the U.P. government to care for the health of its citizens by restricting the use of "gutka" and "pan masala" containing tobacco which is a health hazard is under examination now. It should be recalled that earlier on 23.5.2012 the learned Advocate General had informed this Court that prohibiting the sale of "gutka" was under consideration of the State government, even though banning ''pan masala without tobacco as an ingredient was not being contemplated. This statement by the Advocate General was noted with approval in our order of the said date. But contrary to this instead of putting a ban on the manufacture and sale of the product, the State government has even lowered the tax so as to facilitate increased sale of this product in the State of U.P. We have already expressed regret over this development in our order dated 10.9.12.

7. The learned Advocate General however sought to contend that although there is no doubt about the highly deleterious nature of "gutka," but only the Central government can put a restriction on its use.

8. As mentioned above by issuing Regulation 2.3.4 in exercise of its powers u/s

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-dental-association-up-state-…

92 of the Food Safety Act, read with section 26 it is the Central government which has imposed a prohibition on the addition of tobacco and nicotine to food products, and the manufacture, sale and distribution of "gutka" which is a product containing ''pan masala'' with tobacco as an ingredients would thereby fall within the interdict. Regulation 2.11.5 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation prescribing standards for "pan masala" makes it clear that it is a food product.

9. Furthermore in view of section 26(1) read with section 26(2)(v) of the Food Safety Act every food business operator, (such as the intervening manufacturers and distributors of the item) are to ensure that the articles of food being supplied by them satisfy the requirements of the Food Safety Act and the Rules and Regulations made thereunder and no food business operator may manufacture, store, sell or distribute any article of food in contravention of any other provision of the Act or the Rules or Regulations made thereunder. The Central and State Food Authorities are both responsible for enforcement of the Act, and the said authorities u/s 29(2) are to monitor and verify that the relevant requirements of law are fulfilled by food business operators at all stages. u/s 30(1) the State government is to appoint a Commissioner of Food Safety for the State for efficient implementation of food safety and standards and other requirements laid down under the Act and the Rules and the Regulations made thereunder. u/s 36 Designated Officers are to be appointed by the Commissioner for Food Safety not below the rank of a Sub-divisional officer to be in-charge of food safety administration in the area. u/s 36(2)(b) the Designated Officer is to prohibit the sale of any article of food which is in contravention of the Act or the rules and regulations framed thereunder. Food Safety officers are also to be appointed by the Commissioner of Food Safety for local areas as maybe chosen by the Food Commissioner u/s 37(1) for the purpose of performing functions under the Act and the rules and regulations. The Food Safety Officer may seize any article of food u/s 38(1)(b) for contravention of the Act or the rules and regulations. u/s 86 the Central government is empowered to give necessary directions to a State Government for carrying out all or any of the provisions of the Act and the State governments have been mandated to comply with these directions. From the above it appears that the State governments are the implementing arms for carrying out the provisions, rules and regulations framed by the Centre laying down Food standards and for regulating their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption.

10. A plea raised by the intervening food business operators in their intervention applications was that there was a special statute on the same subject viz. the "Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003" on the same subject which would prevail over the Food Safety Act. As Regulation 2.3.4 issued by the Central government on 5.8.2011 was a later statute dealing with a specific issue, the prohibition on addition of tobacco and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-dental-association-up-state-…

nicotine to a food product, whereas the Cigarettes and other Tobacco products Act 2003 only sought to restrain advertisements and to lay down other conditions to restrict the deleterious effects of tobacco consumption on youths etc. and other conditions relating to its trade and commerce, the Regulation which was later in point of time which dealt with a different subject, viz. the addition of tobacco or nicotine to food products should normally prevail over an earlier statute. Section 89 also enjoins that the provisions of the Food Safety Act would have overriding effect over other laws for the time being in force on the subject.

11. In the light of the aforesaid discussion we would like to have the response of the State Government on the next listing as to the steps that have been taken in the 14 day period allowed by this Court for ensuring compliance of the directions of the Central government, the Food Safety Act and the regulations and rules framed thereunder for restraining the manufacture, sale and distribution of ''gutka'' or other products containing tobacco as an ingredient in the State of U.P., failing which this Court may have to consider the need to issue a mandamus to the food business operators and the State government and its concerned authorities to follow the legal provisions imposing a ban on such products and to ensure compliance of Regulation 2.3.4 and the directions of the Central government in this regard. List this case on 10.10.2012. On that date compliance reports and necessary affidavits may also be submitted.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-dental-association-up-state-…