

(2016) 06 AHC CK 0048

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 29633 of 2016

Pranvesh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Cigarettes and Other Tobacco Products (Packing and Labelling) Rules, 2008 — Rule 3
Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 &

Citation : (2016) 5 AllWC 5192

Hon'ble Judges : Arun Tandon and Mrs. Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : In Person, for the Petitioner; C.S.C. and A.S.G.I, for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon and Mrs. Sunita Agarwal, JJ.—Let the Senior Superintendent of Police, Allahabad, Nagar Nigam, Allahabad through its Commissioner, and the Allahabad Development Authority, Allahabad through its Chairman be impleaded as respondents no. 5, 6 and 7 during the course of the day.

2. Notice on behalf of Senior Superintendent of Police, Allahabad has been accepted by the learned Standing Counsel. Notice on behalf of Nagar Nigam, Allahabad has been accepted by Shri Vivek Varma, Advocate and Shri A.B. Paul, Advocate has accepted notice on behalf of Allahabad Development Authority.

3. At the very outset we record our appreciation for the public cause espoused by Pranvesh, a 5 year Law Course student of University of Allahabad, by means of this Public Interest Litigation.

4. The facts recorded in the writ petition reflect that the shops in the shape of temporary/permanent structures are being run at every nook and corner of the city of Allahabad for selling tobacco and tobacco products both to the minors as well as the persons aged above 18 years without any fear/restriction. It is the

case of the petitioner that such consumption of tobacco and tobacco products (including cigarette etc.) is a health hazard specifically for the minor children. Photographs appended along with the petition depict that such stalls (temporary/permanent) are standing just in front of the school gate.

5. The other issue highlighted in this petition is that under the provisions of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (herein after referred to as the "Act, 2003"), advertisement of tobacco and tobacco products is prohibited. In order to overcome to the said prohibition, the manufacturers of tobacco and tobacco products have adopted a novel method. The advertisements put by the manufacturers in the print media and visual media are camouflaged in a manner to suggest that they are promoting products which do not contain tobacco, when as a matter of fact products with identical name and identical packing containing tobacco are available in the market manufactured by the same manufacturers. Thus the real intent is to advertise the product containing tobacco.

6. By way of an example, the petitioner has produced before us the samples of sachets/pouches of various products of the same manufacturers. There is hardly any difference apparent to the naked eye as to which of the sachet/pouch contains tobacco and which of the sachet/pouch does not contain tobacco. The samples of sachets/pouches of pan masala/chewing tobacco produced before this Court, are kept on record.

7. Learned counsel for the petitioner submits that such misleading advertisements must be stopped in order to achieve the purpose of the prohibition imposed under Section 3 of the Act, 2003.

8. It has also been asserted that the sale of tobacco goes uninterrupted, all around the school boundaries as also around the Public institutions especially High Court/District Court. The State and its machinery are deliberately keeping silence in such a serious matter causing grave health hazard for the public at large in the City of Allahabad. Chewing of such tobacco cause another nuisance of spitting on the roads, walls and floors both inside and outside the public institutional buildings like High Court/District Court resulting in un-hygenic conditions in and around the work place.

9. Although it has not been pleaded in the writ petition but it has been stated before us that what is true about the tobacco and cigarettes is equally true about the liquor shops which are being run almost at every crossing in the City of Allahabad. All the counsels present in the Court, who are more than 70 in number, unanimously stated that the liquor shops supply/sell liquor to rich young, adolescents and aged people in the like manner in their parked car for consumption at a public road/road patris. Minor children are engaged as errand boys.

10. The sale of liquor has increased with the opening of the model shops where

the liquor is sold for consumption without adhering to the norms of age.

11. It has also been stated before us by the counsels present in the Court that one can easily find the cars parked near Model Shops at the road crossings or at the road sides for purchase/consumption of liquor specially after the sun set mostly by young rich people.

12. It has also been stated that many a times it can be seen that police personnel themselves purchase tobacco, tobacco products from these shops. They are in fact silent spectators of these perpetrators of the social crime. They do not speak/stop the parking of vehicles blocking the roads and road crossings. Be it the crossing of Mahatma Gandhi Marg and Sardar Patel Marg, the crossing of Kanpur Road or the crossing of Nyaya Marg near the High Court or other similar crossings in the entire City of Allahabad.

13. Further it is the case of the petitioner that entire law and order situation in the matter of illegal use of the road patris specifically in the localities of Civil Lines, Mumfordganj, George Town, Dhoomanganj etc. has gone haywire for the reason that the police and the administration both have failed in checking/curbing unauthorized parking and consumption of tobacco and liquor in public.

14. The other issue raised is that the "Statutory Warning" as required under Rule 3 and the Schedule attached to the Cigarette and Other Tobacco Products (Packing and Labelling) Rules, 2008 (herein after referred to as the "Rules, 2008") is not being ensured on the pouches/sachet in the specified colour, size and clarity. The textual warning is not legible at all, and there is no pictorial warning in addition to the textual warning as required. The statutory Rules are being flouted with impunity.

15. The facts so presented depict a very disturbing picture forcing the Court to take suo moto cognizance in order to safeguard the health of the people at large. It has to be ensured that not only such unauthorized sales/advertisements are banned, the unauthorized occupation of the road patris for consumption of liquor and tobacco including cigarette etc. be stopped immediately.

16. We, therefore, issue following directions :

(a) All temporary/permanent stalls/shops/kiosks selling tobacco and tobacco products within 100 yards radius from the outer limit of the boundary wall on all sides of all educational institutions be removed permanently with immediate effect so as to ensure strict compliance of the Prohibition on Sale of Cigarettes and Other Tobacco Products Around Educational Institutions Rules, 2004. Similarly all such stalls/shops/kiosks selling liquor within the radius of 500 mtrs. from the boundary wall on all sides of all educational institutions be closed/removed permanently with immediate effect so as to ensure strict compliance of Rule 5(4) & (6) of U.P. Number and Location of Excise Shops Rules, 1968.

(b) The High Court/District Court as an institution enjoy a unique/special status in the State and whatever restrictions apply under the aforesaid Rules in respect

of sale of tobacco/tobacco products and liquor for the educational institutions and other public places, must apply to the Court premises with more rigour. We, therefore, direct that all shops/stalls/kiosks, whether permanent or temporary selling tobacco/tobacco products, cigarettes etc. or liquor within 500 mtrs. radius on all sides of the boundary walls of the High Court/District Court shall be removed/closed permanently with immediate effect.

(c) All such temporary/permanent stalls constructed or standing on the road patris inside the City of Allahabad shall be removed permanently within four weeks from today and it is the responsibility of the district administration to ensure that these encroachers do not re-install.

(d) Supply of tobacco, tobacco products and liquor for consumption at the public place to the persons seated in the parked cars on the roads and road sides shall be stopped immediately. Sufficient number of police personnels must be posted outside the Model Liquor Shops to ensure that the consumption of liquor is permitted strictly within the premises and in no case on the roads in full public view.

(e) Parking of vehicles at the road crossings including road patris will be prohibited and whosoever violates shall be dealt with heavy fine.

(f) All hoardings/banners/pamphlets depicting liquor bottles whether in the Brand name or in the name of shop or otherwise, shall be removed forthwith.

(g) Respondents are directed to take strict action against all the manufacturers including those reported above for not adhering to the norms of the "statutory warning". It must be ensured that the law framed in this regard shall be strictly adhered to.

17. It shall be the responsibility of the District Magistrate and the Senior Superintendent of Police, Allahabad to ensure that the directions given herein above are carried out in their letter and spirit and any infraction thereof may result in action being recommended against them.

18. Compliance affidavit shall be filed by the District Magistrate, Allahabad and Senior Superintendent of Police, Allahabad on or before the next date fixed.

19. The matter shall be listed next on 21.07.2016.