

(2012) 12 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : CWP's No's. 1732, 1885 and 7033 of 2010

Sanjeev Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-12-2012

Acts Referred:

Citation : (2012) 12 SHI CK 0052

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Ajay Mohan Goel and Mr. Karan Singh Kanwar in CWP No. 1732/2010-B and CWP No. 1885/2010-C, Mr. Himmat Negi, Vice and Mr. Ajay Sharma in CWP No. 7033/2010-H, for the Appellant; Shrawan Dogra, Advocate General, with Mr. Rajesh Mandhotra, D.A.G., for the State in CWP No. 7033/2010-H, Mr. Sumit Sharma, Vice, Mr. Bhawna Dutta, in CWP No. 1732/2010-B, Mr. Anil Chauhan and Mr. Ravinder Thakur, Central Government Counsel, for the Union of India in CWP No. 1885/2010-C, for the Respondent

Judgement

1. On 19.10.2012, this Court had passed a detailed order and issued the following directions:

10. The stand of the State, to say the least, is ambiguous. More than a year has elapsed since this affidavit was filed. Why does the State not explore the other alternate packaging material? We had in our earlier orders on many occasions indicated that we do not want to totally ban plastic and non-biodegradable packaging and the same can be used for packaging essential items, such as, milk, vegetable oils, medicines, etc. which are the daily needs of the consumer because we do not want the prices of these items to increase and affect the poor public which is already reeling under the impact of inflation. At the same time, we cannot permit non-essential items, especially items commonly known as junk food which adversely affect the health of the children to be packed in nonbiodegradable packaging. Already a start has been made by banning the sale of Gutka, etc. Junk food may not fall in the same category as the Gutka or other tobacco items but the adverse effects of such junk food are well known.

11. As a start, we are of the opinion that there should be a ban on only those non-essential items which fall in the category of junk food, such as, wafers, chips, sweets, noodles, chocolates, Ice cream candy, biscuits, namkeen, food items containing MSC etc. which should be brought into Himachal only in biodegradable packaging. Even soft drinks should be brought in glass bottles or other biodegradable packaging but not in non-biodegradable packaging. Even if the costs of such non essential items has to be increased slightly to meet the costs of this biodegradable packaging it would be the worth paying that extra money to protect not only the environment of the State but also the health of the children. We also make it clear that if we find that this experiment is successful then we may expand the scope of this order to cover other nonessential items also.

12. We constitute a Committee to be headed by the Principal Secretary (Science & Technology) and comprising of the Principal Secretary (Law), Principal Secretary (Health), Director (Health Services), Director (Ayurveda) and if Director (Ayurveda) is not a medical specialist then the senior most Ayurvedic Specialist in the State of Himachal Pradesh, Head of Department of Pediatrics, IGMC, Shimla and Head of the Department of Medicines, IGMC, Shimla. The Committee will draw up a list of those items which can be termed as junk food and submit its report to the Court by 30th November, 2012.

Now, an affidavit has been filed by the Chief Secretary to the Government of Himachal Pradesh, wherein it is submitted as follows:

3. Detailed deliberations were held as to ascertain which items can be termed as "Junk food". The minutes of the meeting held on 13.12.2012 are at Annexure-R-2/1. Also annexed is the letter from the Additional Director, Health Services at Annexure R-2/2, which says that the "Food Safety and Standard Act (Packaging and Labelling) Regulation, 2011" is a Central Act and any amendment to these regulations or provisions contained in the Act can be carried out by the Central Government.

4. The Committee finally concluded with following recommendations that:

? It is clear that in the context of our country, the definition of "junk food" is not clear, especially which is being further packed in non biodegradable plastics and could be clearly termed as "non essential" commodities.

? In view of the fact that necessary legal definition of junk food does not exist in current format and, therefore, its regulation would not be legally tenable.

? Hon"ble High Court may like to implead Union of India in the matter so as to ensure that the legal definition of term "junk food" under the relevant regulatory provisions is coined and enforcement made effective.

? Further, the following items which do not fall in the category of "junk food" but being currently packed in non-biodegradable plastics can be considered for packaging in biodegradable plastic, cloth bags, paper etc. after the stakeholder

consultations are carried out by the Department of Environment, Science & Technology:-

? Gift items-toys.

? Cosmetic products.

? Readymade clothes packaging (shirts, trousers, suit lengths, sarees etc.)

? Mattresses/pillows etc.

2. All that we can say is that the import of our order was not understood. The Committee cannot sit over the order of this Court. We had directed the Committee to identify the items, which could be termed as junk food. Thereafter, what action was to be taken was for this Court to decide and it was not for the Committee to advise this Court whether such directions can be issued or not. The Committee has also not cared to notice that the Union of India is already a party in the writ petitions. We have only sought assistance of the Committee with a view that they could assist the Court as to which items are essential items and can be permitted to be supplied in plastic packaging and which items are junk food. We had indicated some of the items which could be termed as junk food. We had given a direction to the Committee to draw up a list of items which could be termed as junk food and submit a report to this Court by 30.11.2012. The Committee has willfully disobeyed the orders of this Court on the specious plea that the necessary legal definition of junk food does not exist in current format and its regulation would be legally untenable. The Committee should have done the job which we had asked it to perform and not sat over the orders of this Court.

3. If the State is aggrieved by our orders, it can approach the Supreme Court but the Officers of the State, especially of the rank of Chief Secretary and Secretary (Law), cannot sit over the orders of this Court. We are pained to observe that even the Secretary (Law), who was a member of the Committee, has not even pointed out to the Committee that the orders of this Court have to be complied with. We, therefore, direct the Committee to reconsider the matter and give us a list of junk food items, within ten days from today. List on 10.1.2013. In case the Committee does not hold a meeting or does not identify the junk food items, the Chief Secretary as well as the Secretary (Law) shall remain present in the Court on the next date.

A duly authenticated copy of this order be supplied to the Office of the learned Advocate General, today itself.