

M/S. Shree Sai Traders vs <https://www.mhc.tn.gov.in/judis> on 2 January, 2023

Author: Anita Sumanth

Bench: Anita Sumanth

W.P.Nos.16159 to 1
WMP.Nos.17458 to 1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.16159 to 16161 of 2017 &
WMP.Nos.17458 to 17463 of 2017

M/s. Shree Sai Traders,
Rep. by its Proprietor G.Sangeetha,
Chinnandan Kovil Street,
No.68-A, Gandhi Nagar Main Road,
Karur – 639 001.
Karur District

... Petitioner in W.P.No.16159 of 20

M/s.Sri Guru Trader,
Rep.by its Proprietor S.Mariappan,
No.2B/7F, II Floor,
Mamundi Vathiyar Lane,
East Masi Street,
Madurai – 625 001.
Madurai District.

... Petitioner in W.P.No.16160 of

M/s.R.D.Mehra Traders,
Rep. by its Partner Deepak Mehra,
No.90, Walltax Road,
Parrys,
Chennai – 600 006.

... Petitioner in W.P.No.16161 of

Vs

<https://www.mhc.tn.gov.in/judis>

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W.P.Nos.1615
WMP.Nos.17458

The Commissioner of Food Safety,
Office of the Commissioner of Food Safety,
5th Floor, DMS Office Building,
No.259, Anna Salai, DMS Campus,
Teynampet,
Chennai – 600 006.

... Respondent i

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, to call for the Notification No.VI(1)/155(a)/2017, dated 23.05.2017 on the file of the respondent and quash the same as illegal as far as the 'Chewing Tobacco' is concerned.

(In all W.P.'s)

For Petitioners

: Mr.S.Rajasekar

For Respondent

: Mr.Alagu Goutham

Government Advocate

COMMON ORDER

The petitioners are traders in chewing tobacco and registered dealers on the files of the State Commercial Tax Authorities. They challenge a notification issued by the Commissioner of Food Safety which includes chewing tobacco within the ambit of the provision of the Food Safety and Standards Act, 2006.

2.The notification is challenged on the ground that excess of tobacco is not a food product and thus the restrictions placed by the Food Safety and Standards <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 (Prohibition and Restriction on Sales) Regulations Act, 2011 would not apply in such a case.

3.The petitioner relies on two orders passed by learned Single Judges of this Court in (i) Jayavilas Tobacco Traders LLP Vs The Designated Officer, the Food Safety and Drugs Control Department [W.P.No.21 of 2017 dated 09.06.2017] and (ii) Manufacturer, Tejram Dharam Paul, Punjab and Another Vs The Food Safety Inspector [Crl.O.P.(MD) No.5505 of 2015 dated 27.04.2015 Madurai Bench of the Madras High Court].

4.However, this issue has been decided against the petitioner by the First Bench of this Court in J.Anbazzhagan Vs Union of India and Others [2018 (7) SCC 365]. The prayer in that writ petition was for a mandamus directing the respondents to constitute a Special Investigation Team to be headed by a retired Judge of this Court and comprising officials drawn from Central Bureau of Investigation and other departments to be identified by this Court and take all effective steps to seize and

eradicate banned items, more particularly Gutkha and Pan Masala containing tobacco and/or nicotine in line with Gazette Notification dated 23.05.2015 passed by the Commissioner of Food Safety and Drug Administration/R11 and in line with the judgment of the Supreme Court in the <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 case of Central Arecanut Marketing Corporation Vs. Union of India [T.C.(Civil) No.1 of 2010 dated 23.09.2016].

5. That writ petition came to be disposed by way of a decision reported in [2018 (3) CTC 449] wherein this Court has upheld the regulation on the sale of tobacco. The Bench has also specifically disagreed with the decisions of the learned Single Judges of this Court relied upon by the petitioner. Paragraphs 73 to 83 of the judgment of the First Bench of this Court are extracted below:

“73. The Food Safety Act is a statute enacted after COTA. The definition of “Food” in Section 3(j) of the Food Safety Act is different from the definition of food in the Prevention of Food Adulteration Act, 1954, which was as follows:

“Section 2. Definitions: - In this Act unless the context otherwise requires,-

(v) “Food” means any article used as food or drink for human consumption other than drugs and water and includes,

(a) Any article, which ordinarily enters into, or is used in the composition or preparation of, human food,

(b) Any flavouring matter or condiments, and

(c) Any other article which the Central Government may, having regard to its use, nature, substance or quality declare, by notification in the official Gazette, as food for the purposes of this Act.”

74. Under the Food Safety Act, food means any substance, whether processed, partially <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 processed or unprocessed, which is intended for human consumption. It includes primary food to the extent defined in clause (zk), that is an article of food being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman. It also includes genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water, used into the food during its manufacture, preparation or treatment. What is excluded is animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.

75. Significantly, in *Godawat Pan Masala Products I.P. Ltd. and another v. Union of India and others*, reported in (2004) 7 SCC 68, the Supreme Court observed:

“6. Thus, the Act 34 of 2003 being a special Act, and of later origin, overrides the provisions of Section 7(iv) of the Prevention of Food Adulteration Act, 1954 with regard to the power to prohibit the sale or manufacture of tobacco products which are listed in the Schedule to the Act 34 of 2003.”

76. The Prevention of Food Adulteration Act, 1954 has been repealed and replaced by the Food Safety Act. The definition of “food” in Section 3(j) of the Food Safety Act is different from and far more expansive than the definition of “food” in Section 2(v) of the Prevention of Food Adulteration <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 Act. Further, the Food Safety Act has been enacted after the COTA.

77. The judgment of the Supreme Court in *Godawat Pan Masala Products I.P. Ltd., supra*, rendered in the context of the Prevention of Food Adulteration Act, 1954 will not have application in the facts and circumstances of the instant case.

78. It appears that in *Jayavilas Tobacco Traders LLP v. The Designated Officer, The Food Safety and Drugs Control Department*, (W.P.No.21 of 2017, dated 9.6.2017), *Duraiswamy, J.* referred to and followed the judgment of the Supreme Court in *Godawat Pan Masala Products I.P. Ltd., supra*. It is on that ground that the notifications impugned were held to be void.

79. With the greatest of respect, we are unable to agree with the Single Bench decision of *Duraiswamy, J.* in *Jayavilas Tobacco Traders LLP, supra*, and and the decision of the Madurai Bench in *CrI.O.P.(MD) No.5505 of 2015* [Manufacturer, *M/s.Tejram Dharam Paul, Maurmandi, Bhatinda District, Punjab and another v. The Food Safety Inspector, Ambasamudram*] dated 27.04.2015.

80. In *Dhariwal Industries Limited and another v. State of Maharashtra and others*, reported in (2013) 1 Mah LJ 461, a Single Bench of the Bombay High Court held:

"19. While the definition in the 1954 Act excluded drugs and water, the definition in the Food Safety Act, 2006 excludes animal feed, live animals, plants prior to harvesting, drugs and medicinal products, cosmetic, narcotic and psychotropic substance. Obviously, gutka and pan masala do not fall in any of these excluded categories. The expression "any substance which is intended for human consumption" in FSS Act, 2006 is also wider than the expression "any article used as food or drink for human consumption" in PFA Act, 1954. It is also pertinent to note that the <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 definition of food in the Act of 2006 specifically includes "chewing-gum" and any substance used into the food during its

manufacture, preparation or treatment. Hence, even if gutka or pan masala were not to be ingested inside the digestive system, any substance which goes into the mouth for human consumption is sufficient to be covered by definition of food just as chewing-gum may be kept in the mouth for some time and thereafter thrown out. Similarly gutka containing tobacco may be chewed for some time and then thrown out. Even if it does not enter into the digestive system, it would be covered by the definition of "food" which is in the widest possible terms. The definition of "food" under section 2(v) of the PFA Act was narrower than the definition of food under Food Safety Act, still the Supreme Court in Ghodawat case held that pan masala and gutka were "food" within the meaning of PFA Act. The very fact that the petitioners themselves had obtained licences under the PFA Act and have also obtained licences under the Food Safety Act, 2006 is sufficient to estop them from raising the contention that gutka and pan masala do not fall within the definition of "food" under the Food Safety Act, 2006."

81. We agree with the view of the learned Single Bench of the Bombay High Court that gutkha and pan masala are food within the meaning of the Food Safety Act. Gutkha also being a tobacco product might be governed by the provisions of the COTA. COTA deals with regulation of cigarettes or other tobacco products. The Food Safety Act is not in conflict with the provisions of COTA in any manner. COTA does not <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 deal with adulteration, though it may remotely touch upon misbranding.

82. It is well settled that the endeavour of the Court should be to harmonize two Acts seemingly in conflict. Of course, in this case there does not appear to be any conflict between COTA and the Food Safety Act. COTA is in addition to and not in derogation of other laws relating to food products. There is no non obstante clause in COTA which excludes the operation of other Acts.

83. Considering the harmful effects of consumption of chewable tobacco, such as gutkha, which leads to fatal ailments such as cancer, this court cannot shut its eyes to the malaise of illegal manufacture and sale of gutkha within the jurisdiction of this High Court, i.e., the State of Tamil Nadu and the Union Territory of Puducherry."

6. These writ petitions are thus liable to be dismissed in view of the discussion as above. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes
Speaking Order

To

1. The Commissioner of Food Safety,

Office of the Commissioner of Food Safety, 5th Floor, DMS Office Building, No.259, Anna Salai, DMS Campus, Teynampet, Chennai – 600 006. <https://www.mhc.tn.gov.in/judis> W.P.Nos.16159 to 16161 of 2017 & WMP.Nos.17458 to 17463 of 2017 Dr.ANITA SUMANTH, J.

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