

U.P. Pan And Tobacco Product Seller ... vs Commissioner Of Food Safety And Drug ... on 30 May, 2024

Author: Sangeeta Chandra

Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2024:AHC-LK0:41453-DB

Court No. - 3

Case :- WRIT - C No. - 4943 of 2024

Petitioner :- U.P. Pan And Tobacco Product Seller Association , Lko. Thru. Its President

Respondent :- Commissioner Of Food Safety And Drug Administration Lko. And 2 Others

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Vivek Kohali, learned Senior Counsel assisted by Shri N.K. Pandey, learned counsel for the petitioner, learned Additional Chief Standing Counsel for the State-respondents and Shri S.B. Pandey, learned Senior Counsel & DSG-I assisted by Shri Varun Pandey, learned counsel for opposite party No.2.

2. This writ petition has been filed with the following main relief:-

"I. Issue a writ, order or directing in the nature of certiorari thereby quashing the notification bearing No.FSDA(MU)/Food/Pan Masala/2513, dated 07.05.2024 issued by respondent No.1, as being arbitrary, illegal and ultra vires the cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Food Safety and Standards Act, 2006, Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and Constitution of India."

3. A preliminary objection raised by learned Additional Chief Standing Counsel Shri Siddharath that the writ petition in a manner has been drafted is not maintainable. He has referred to the application for interim relief wherein instead of asking for stay of the impugned notification, ad-interim injunction has been asked from the High Court in writ jurisdiction.

4. Learned counsel appearing for the petitioner has accepted that the interim relief application has not been drafted rightly. He prays orally that instead of ad-interim injunction, this Court may please to read the same as a prayer for stay of the operation of the impugned notification.

5. Learned Additional Chief Standing Counsel has also pointed out an order passed by the Hon'ble Supreme Court in Transfer Case (Civil) No.1 of 2010; Central Arecanut Marketing Cooperation and others Vs. Union of India and others 2016 SCC OnLine SC 1941, a copy of which has been filed as Annexure No.3 to the writ petition, wherein the Hon'ble Supreme Court is considering the practice of selling of Gutkha i.e. Pan Masala mixed with tobacco as a product which is harmful to the public health. It has been pointed out that the impugned notification refers to the order passed by the Hon'ble Supreme Court dated 23rd September, 2016 in the Transfer Case as aforesaid and the fact that it was pointed out by learned Amicus Curiae to the Hon'ble Supreme Court that certain manufacturers were selling their Pan Masala along with tobacco by the same brand name in twin packs and were adopting a subterfuge and hence, instead of the earlier "ready to consume mixes", chewing tobacco companies are selling Gutkha in twin packs to be mixed as one. The Amicus Curiae had also pointed out to the Hon'ble Supreme Court that the Court had not granted any stay of Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and the concerned authorities are duty bound to enforce the said regulations framed under Section 92 read with Section 26 of the Food Safety and Standards Act, 2006. The Court after noting such submissions made by learned Amicus Curiae had directed the concerned statutory authorities to comply with the "above" mandate of the law, which in fact is referring to the Regulation 2.3.4 of the Regulations, 2011. A direction was issued to the Secretaries, Health Department of all the States and Union Territories to file their affidavits before the next date of hearing on the issue of total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine. By the impugned notification, the respondents have only complied with the Regulation 2.3.4 of the Regulations, 2011.

6. Learned counsel for the respondents has also pointed out that once the Supreme Court is in seisin with the matter and it is considering all aspects of the matter, the petitioner should go before the Hon'ble Supreme Court.

7. Learned counsel appearing for the petitioner, at this stage, says that he wishes to withdraw the writ petition.

8. The writ petition is dismissed as withdrawn.

Order Date :- 30.5.2024 Ashutosh