

Dadasaheb Kushabapu Pawar vs The State Of Maharashtra And Others on 21 December, 2023

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2023:BHC-AUG:27068-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL PUBLIC INTEREST LITIGATION NO.2 OF 2021

Dadasaheb Kushabapu Pawar,
Age 41 yrs., Occ. Agri.,
R/o At Post Tambhere, Kolhar Road,
Pawar Vasti, Tambhere,
Tq. Rahuri, Dist. Ahmednagar.

... Appellant

... Versus ...

- 1 The State of Maharashtra
Through it's Principal Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2 The Principal Secretary,
Food Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai - 32.
- 3 The Director General of Police,
Police Mukhyalaya,
Mumbai.
- 4 The Special Inspector General of Police,
Nashik Range, Nashik.
- 5 The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
- 6 The Commissioner,
Food Safety and Drugs Administration,
Survey No.341, Bandra - Kurla Complex,
Bandra (East), Mumbai - 400 051.

...
Mr. A.S. Kale, Advocate h/f Talekar and Associates for petitioner
Mr. D.R. Kale, PP for respondents/State
...

CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 02nd NOVEMBER, 2023
PRONOUNCED ON : 21st DECEMBER, 2023

JUDGMENT :

(PER : SMT. VIBHA KANKANWADI, J.) 1 Present Public Interest Litigation has been filed under Rule 4(e) of the Bombay High Court Public Interest Litigation Rules, 2010 together with Articles 12, 14, 21 and 226 of the Constitution of India for following prayers :

"A) To direct the respondents to constitute a Special Unit/Special Task Force in every district to stop manufacture, storage, distribution, transport or sale of tobacco and its allied products which is either flavoured, scented or mixed with any of the additives, by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

B) To direct the respondents to strictly follow the guidelines of the State Government in raiding/seizing and initiating criminal prosecution for manufacture, storage, distribution, transport or sale of 3 Cri.PIL_2_2021_Jd tobacco and allied banned products by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

C) To direct the respondents to create helpline numbers in every districts to complain about manufacture, storage, distribution, transport or sale of tobacco which is either flavoured, scented or mixed with any of the additives by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

D) To direct the respondents to strictly follow the guidelines of the State Government issued in GR dated 29.05.2020 prohibiting consumption and spitting of tobacco, supari, pan masala, gutkha etc. in public places to prevent the spread of epidemic diseases by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

E) To direct the respondents to initiate criminal as well as departmental action against the police officers who are raiding/seizing the tobacco and allied banned products contrary to guidelines issued by the State Government by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

F) To direct the respondents to undertake strict action against erring police officers and others involved in gifting and raising funds/ money for construction of police stations/outposts including suspension, termination and initiation of criminal proceedings, by issuing a writ of mandamus, or any other appropriate writ, order or direction, as the case may be;

4 Cri.PIL_2_2021_Jd G) To grant any other relief to which the petitioner is entitled to;

H) To direct the State Government to increase the lab testing infrastructure and all the labs to have/obtain NABL accreditation to facilitate precise testing by issuing writ of mandamus or any other writ or directions as the case may be;

I) To direct the State Government to ensure that the existing food testing laboratories are well equipped with the technical persons and testing facilities and submit its report pending hearing and final disposal of this petition."

2 The petitioner contends that he has filed several writ petitions in the nature of Public Interest Litigation, as the subjects on which he had filed the petitions were concerning the interest of the public at large. He is neither a politician nor belongs to any political party, but with an intention that the menace of tobacco should be eliminated as it is hazardous to the health of the public, especially the addiction to chewing of gutkha and pan masala causes Acute Hyper magnesias, cardiac arrest, oral sub mucous fibrosis, oral cancer, Leukoplakia, Esophageal cancer, stomach cancer, metabolic abnormalities, reproductive health, gastro intestinal and respiratory diseases, he has filed the present petition. It has been submitted that the State has enacted the Food Safety and Standards Act, 2006 for prevention of deterioration of citizens health. The Central as well as the State Government 5 Cri.PIL_2_2021_Jd and the Food Safety Commissioner are required to follow the principles under Chapter III of Food Safety and Standards Act, 2006 (hereinafter referred to as "FSS Act". The FSS Act Regulation 2.3.4 regulates food product not to contain any substance which may be injurious to health. Tobacco and nicotine shall not be used as an ingredient in any food product. Chewing tobacco is listed as food at item No.40 in the table under sub regulation 2.3.1 i.e. restriction on the use of insecticides under Regulation 2.3. Hon'ble Supreme Court as well as this Court in catena of judgments have held that chewing tobacco is food within the meaning of Section 3(j) of FSS Act. Taking into consideration hazardous effects of gutkha and pan masala, the Food Safety Commissioner, Maharashtra State prohibited manufacture, storage, distribution, transport or sale of tobacco and its allied products by issuing circular/order dated 15.07.2020 for a period of one year. Despite there being prohibitory orders the manufacture, storage, distribution, transport or sale of tobacco and its allied products are taking place. Despite there being specific directions to initiate criminal proceedings jointly by police and food safety officers, the police officers are independently

without the aid of food safety officers initiating criminal actions against the persons who are engaged in manufacture, storage, distribution, transport or sale of tobacco and its allied products in the State. The petitioner alleges that these actions are only 6 Cri.PIL_2_2021_Jd initiated to extort money from the accused persons and not to prevent actual activities. Only for the name sake some First Information Reports are registered by the police contrary to law. In fact, the Government ought to have established special units in every district to prevent manufacture, storage, distribution, transport or sale of tobacco and its allied products. In the pandemic situation, the situation has worsened. In the outbreak of COVID-19 pandemic the State Government issued Resolution dated 29.05.2020 prohibiting consumption and spitting of tobacco, supari, pan masala, gutkha etc. in public places to prevent the spread of epidemic diseases. However, such circulars are not implemented and, therefore, necessary directions are required to be given. By way of amendment it has been contended that in Swami Achyutanand Tirth and others vs. Union of India [(2016) 9 SCC 699] it was directed that the State Food Safety Authorities should ensure that there should be adequate lab testing infrastructure and all the labs should obtain NABL accreditation to facilitate precise testing. As on 31.03.2019 the Food Authority had network of 269 laboratories comprising of 251 laboratories for primary testing, of which 175 laboratories are recognized and notified under Section 43(1) of FSS Act and 18 laboratories for appellate (referral) testing are recognized and notified under Section 43(2) of the FSS Act. These numbers will have to be increased 7 Cri.PIL_2_2021_Jd so that the testing is done within reasonable time and the reports are received. The World Health Organization has also taken a serious note of such habit and the impact of such habits on the youths. Sizable numbers of persons are suffering from oral cancer due to chewing of tobacco and allied products. With these facts the above said prayers have been made. 3 After the issuance of notice the first affidavit-in-reply is filed by Uday Shankar Vanjari, the Joint Commissioner (Food), Food and Drugs Administration, Aurangabad on behalf of respondent No.6. It has been contended that the various provisions of FSS Act are being implemented with utmost sincerity and actions are taken in case of violation of any provisions of the Act. Proper surveillance and inspections, collection of samples and seizures etc. are periodically made. Since the year 2012 the Food Safety Commissioner, Maharashtra has prohibited the manufacture, storage, distribution, transport (in and through Maharashtra State) or sale of tobacco and areca nut (betel nut) which is either flavoured, scented or mixed with any of the said additives or whether going by the name or form of gutkha, pan masala, flavoured/scented tobacco, flavoured/scented supari, manufactured chewing tobacco with additives, kharra or otherwise by whatsoever name called, whether packed or unpacked and/or sold as one 8 Cri.PIL_2_2021_Jd product or though packed as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer for its consumption in the whole State of Maharashtra. Every year the notification is renewed. The dates have been given as to how much seizure has been effected in 6496 First Information Reports registered in the Police Stations and 386 criminal cases filed in Courts of law throughout the State. Special squad has been also deployed. Taking the help of decision in State of Maharashtra vs. Sayyed Hassan Sayyed Subhan and others in Criminal Appeal No.1195 of 2018 (arising out of Special Leave Petition (Criminal) No.4475 of 2016) decided on 20.09.2018 by Hon'ble Supreme Court it is said that the Police Department can initiate action under Indian Penal Code at their own level. The toll numbers are also given as well as E-mail ID to lodge complaints. Documents have been annexed along with the affidavit-in-reply. The second affidavit-in-reply is on behalf of respondent Nos.1 and 3 which is filed by Aparna Sudhakar Gitay, the Deputy Commissioner of Police, Aurangabad. It has

been stated that along with FSS Act since such ingredients would be attracting, Section 328 of the Indian Penal Code which is cognizable and non bailable, those are invoked and the police can take cognizance and effect seizure. Even the Home Department has issued Government Resolution dated 17.09.2021 as regards applicability of Section 328 of the Indian Penal 9 Cri.PIL_2_2021_Jd Code and other instructions have been issued.

4 Again Uday Shankar Vanjari, the Joint Commissioner (Food), Food and Drugs Administration, Aurangabad by the further affidavit clarifying the typographical mistakes and further explained that even general public can register their complaint Online and during the period 07.02.2022 to 03.03.2022 in all 73 complaints were received either on Landline or by E- mail or Online.

5 Again the Deputy Commissioner of Police, Aurangabad Ms. Aparna Sudhakar Gitay has filed affidavit in compliance with order passed by this Court on 28.07.2022. Again the same facts are reiterated, but it is said that 30 check posts are in operation in entire State. Personnel are deployed at said 30 check posts for checking vehicles at the entry point for any violation of law related to such contraband. Again the data has been given and it is submitted that in all 2413 cases were registered in the State of Maharashtra in 2012 and 1657 cases were registered till June, 2023. Contraband worth Rs.165 crores approximately has been seized. The destruction of the contraband is undertaken by the Police Department as well as Food and Drugs Administration.

10 Cri.PIL_2_2021_Jd 6 Thereafter, on behalf of respondent No.6 Sanjay Bhagwantrao Naragude, the Joint Commissioner, Food and Drugs Administration, Nashik Division, Nashik has filed affidavit in view of order passed by this Court on 26.07.2023. It was with a direction to file affidavit on the point that how many laboratories are sanctioned, how many are functioning, which are able to test the contraband articles. It has been contended that there are 17 laboratories which are functional and out of those three are exclusively controlled and owned by Food and Drugs Department, which are located in Mumbai, Nagpur and Aurangabad respectively. Remaining 14 laboratories are under the Public Health Department and those are testing the food samples and analyzing the food, that is, sent to them. In three laboratories owned and run by the Food Department there are nine Analysts and three supporting staff and three Food Analysts are functioning. It is also submitted that there are no exclusive check posts which are handled by Food and Drugs Department but the check posts are under the Police Department or Road Transport Authorities, who intercepts the vehicles and take search operation. Further, affidavit of the same authority explained that procedure and destruction of prohibited articles is not given in the Act and, therefore, it is controlled by the Commissioner of Food Safety by issuing circular dated 15.12.2012. The date has been given to show as to how much raids have 11 Cri.PIL_2_2021_Jd been conducted and how much articles with its price came to be seized and how much is destroyed as per the law. The Food and Drugs Administration, Maharashtra State has submitted a proposal of Public Private Partnership on 17.01.2023, which is the model for strengthening three laboratories owned and run by the State Government. The State has signed an agreement with Brihanmumbai Municipal Corporation Laboratory, Dadar for analysis of food samples from Food and Drugs Administration, Maharashtra State. Food, Safety and Standards Authority of India, New Delhi has allocated funds for upgradation and strengthening of laboratories owned by Public Health Department.

7 Heard learned Advocate Mr. A.S. Kale holding for Talekar and Associates for the petitioner and learned PP Mr. D.R. Kale for respondents/State.

8 In order to cut short, it can be stated that both sides have assisted the Court in considering the point involved, what are the steps taken up till now and how the public health is important. At this stage itself taking into consideration the prayer clause we would like to say that the petitioner has not produced any such evidence on record which would show that the Police Department is taking actions against the persons who are engaged in 12 Cri.PIL_2_2021_Jd manufacture, storage, distribution, transport or sale of tobacco and its allied products only to extort money from the accused persons. It has not been brought on record by way of any complaint data or any such document which would show that there are allegations by such accused persons against the police that there was an attempt to extort money from them. If at all there is any such attempt, then they have a remedy within the four corners of law for which no directions can be issued in a public interest litigation. Rather it would be a private interest of the particular accused as no generalized statement can be made. Therefore, no relief can be given as prayed in prayer clause 'E' and 'F'. Hon'ble Supreme Court in Sayyed Hassan Sayyed Subhan (supra) has come to the conclusion that the police have the authority to take cognizance when the offence under Section 188, 272, 273 and 328 of the Indian Penal Code are made out.

9 Now, turning towards the other prayer, certainly, Article 47 of the Constitution of India casts a duty on the State though it is the article providing for directive principles; yet, can take such actions or measures for prevention of deterioration of health of the citizens. When we speak about the other rights to every citizen, then good environment conditions and measures for the improvement of the overall health of the every citizen can 13 Cri.PIL_2_2021_Jd be said to be included in the articles which are already governing as fundamental rights. Of course, it is with the other restrictions also and the liberties and sometimes the development may be economic of the State as well as individuals by way of providing employment may prevail over the other. Any fundamental right is not unfettered but it comes with necessary restrictions as well as corresponding duties. Under the said rights the State would be entitled to issue necessary prohibitory orders for the upkeep of the health of the general public. It is well known that the tobacco and the allied products create harmful effects on the human. It invites various diseases if consumed, in any of the other form. Here, in this petition, there is no question of challenge to any Government Resolution, but this is a case wherein issue has been raised how to implement those Government Resolutions in a better manner. The respondents have no objection for the better implementation of the various provisions of the Act and the circulars. It was, therefore, impressed upon the respondents that this is not an adversarial litigation.

10 Though prohibitory orders have been issued by issuing various circulars by the Food Safety Commissioner; yet, certainly, it can be said that it has not eliminated the manufacture, storage, distribution, transport or sale of 14 Cri.PIL_2_2021_Jd tobacco and its allied products from the State of Maharashtra. In other words, though there is circular; yet, violation of the said circulars/prohibitory orders is seen from time to time. We do not find to take the help of the data that has been produced, but certainly, taking into consideration the vast area of the State, the offences which are reported appear to be meagre. The petitioner has prayed for establishment of

Special Task Force or Special Squad/Unit for carrying out the activities/prohibitions as stated in the prohibitory orders. It appears that seven region wise special squads have been created, which is emerging by way of affidavit-in-reply, but it appears that those are not functional. Certainly, when such special squad/unit has been established region wise, then respondent No.1 should see that it is functional and carries the activities as per the various orders and circulars issued by Food and Drugs Administration, Maharashtra State. We would leave it to the State - respondent No.1 as to what should be the composition of the special squad. It is not necessary to direct that the State Government authorities should follow the guidelines in respect of raid and seizure. We presume that it is undertaken unless its violation is demonstrated. The third prayer is in respect of creating helpline number in every district. The helpline toll free number is already there, which appears to have been made operational under the orders of this Court. It would depend upon the public 15 Cri.PIL_2_2021_Jd to utilize the said number. We need not give any further directions as only five complaints have been received on the said number. If public is not utilizing it, then we cannot force it. The only thing we can advise is that all the respondents to make that number public and periodically bring it to the attention of the public at large that such toll free number exists for them to make a complaint, if they want. Further prayer is in respect of directions to the State Government to increase the lab testing infrastructure and all the labs to have/obtain NABL accreditation to facilitate precise testing. Certainly, it is the duty of the State Government to provide proper infrastructure to an authority which has been created under an enactment. The purpose with which the Food Safety and Standards Act came into force is to be achieved, then definitely, it is for the State Government to provide proper infrastructure in the form of laboratories, that too equipped with modern technology, so that the testing is done within reasonable time and the reports are given, otherwise it is our experience that the seized articles are sent for analysis and due to the pendency those are not tested for months together and then the purpose and the evidence may get lost or it may not connect the accused with the crime. Further, taking into consideration the fact that the transport of such contraband is to be prohibited, then the check points will have to be increased and there should be better coordination between the Police 16 Cri.PIL_2_2021_Jd Department, Regional Transport Office and the Food Authorities. 11 We may also note that some observations were given by this Court in Vaman Raghunath Fallary and Sons and others vs. State of Goa and another [2003 SCC OnLine Bom 465]. Those are required to be borne in mind. Further, in the Three Judge Bench of the Hon'ble Supreme Court in Union of India and others vs. Unicorn Industries [(2019) 10 SCC 575] takes note of the fact that the public interest is the superior quality which can override individual equality, wherein it has been held that - The withdrawal of the exemption to the pan masala with tobacco and pan masala sans tobacco is in the larger public interest. The State could not be compelled to continue the exemption, though it was satisfied that it was not in the public interest to do so. We hope and trust that the respondents would keep in mind the said decisions.

12 For the reasons above stated, the petition deserves to be partly allowed. Hence, following order.

ORDER 1 The Criminal Public Interest Litigation stands partly allowed.

17 Cri.PIL_2_2021_Jd 2 The Criminal Public Interest Litigation stands dismissed in respect of prayer clause (B), (D), (E) and (F).

3 Following directions are issued to the respondents.

i) Respondent No.1 is directed to make the Special Unit/Special Squad for the seven regions functional and the constitution of the squad to be decided by the State Government, which will implement the various provisions of Food Safety and Standards Act and the circulars/orders issued therein.

ii) All the respondents to make the helpline toll free number public and bring it to the notice of the public periodically, so that they can lodge report/complaint on the said toll free number.

iii) State Government may consider increasing of the number of laboratories exclusively controlled and owned by the Food and Drugs Department and further pursue the model for strengthening those three laboratories as well as upcoming laboratories of the State Government in view of the proposal of Public Private Partnership by Food and Drugs Administration, 18 Cri.PIL_2_2021_Jd Maharashtra on 17.01.2023.

iv) The State Government to provide
infrastructure including the manpower, esp

technicians and the modern machines to the existing food testing laboratories.

v) It would be appropriate to give period of six months to the State Government to take steps in respect of establishment of laboratories and the infrastructure.

4 The amount of Rs.25,000/- (Rupees Twenty Five Thousand only) deposited by the petitioner in view of order dated 18.01.2021 be credited to the High Court Legal Services Sub Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KA

agd

Signed by: Amol G. Donge
Designation: PA To Honourable Judge
Date: 22/12/2023 11:02:43