

12/8/11  
A. Grover

IN THE HIGH COURT OF KARNATAKA  
AT BANGALORE

Dated this the 17<sup>th</sup> day of September, 2010

PRESENT

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR JUSTICE H S KEMPANNA

Writ Petition No. 27692 of 2010 (GM RES PIL)

Between:

THE INSTITUTE OF PUBLIC HEALTH  
2250, MASTERS COTTAGE  
2<sup>ND</sup> C MAIN 2<sup>ND</sup> C CROSS  
CHINAGAR I PHASE  
BANGALORE - 560 085  
REP. BY ITS FACULTY MEMBER  
DR. UPENDRA M MHOJANI

... PETITIONER

[By Sri Anand Grover, Adv.]

AND

1. THE STATE GOVERNMENT  
OF KARNATAKA  
HEALTH AND FAMILY WELFARE  
DEPARTMENT, DIRECTORATE OF  
HEALTH AND FAMILY WELFARE SERVICES  
ANAND RAO CURCLE  
BANGALORE - 560 009  
REP. BY ITS PRINCIPAL SECRETARY

THE UNION OF INDIA  
DEPARTMENT OF COMMERCE  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI - 110 107  
REP. BY ITS CHIEF SECRETARY



This certificate covers one 24 page  
and a court fee stamps of Rs. 2.40 is affixed

3. THE UNION OF INDIA  
MINISTRY OF HEALTH AND  
FAMILY WELFARE  
NIRMAN BHAVAN  
MAULANA AZAD ROAD  
NEW DELHI - 110 008  
REP. BY ITS CHIEF SECRETARY
4. THE TOBACCO BOARD  
HAVING ITS HEADQUARTERS AT  
G.T. ROAD, SRINIVASARAO THOTA  
GUNTUR - 522 004  
ANDHRA PRADESH  
REP. BY ITS CHAIRMAN
5. THE ITC ROYAL GARDENIA  
NO.1, RESIDENCY ROAD  
BANGALORE - 560 025  
REP. BY ITS MANAGING DIRECTOR
- RESPONDENTS

[By Sri Venkatesh Dodderi, AGA for R1,  
Sri Ambaji Rao Najre, CGSC for R2 and R3;  
Sri Kalyan Basavaraj, ASG for R4  
and Sri K G Raghavan, Sr. Adv. for R5]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE 1<sup>ST</sup> RESPONDENT TOBACCO BOARD TO WITHDRAW ALL FINANCIAL SPONSORSHIP OR ANY SPONSORSHIP OF A NON-MONETARY NATURE, MADE TO THE GTNF 2010 FROM THE 4<sup>TH</sup>-5<sup>TH</sup> OCTOBER 2010 AT BANGALORE OR IF ALREADY MADE, DIRECT IT TO OBTAIN A REFUND OF THE SAID CONTRIBUTION AND ETC..

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY HEARING AND CONSIDERATION OF INTERIM PRAYER. THIS DAY **SHYLENDRA KUMAR J.**, MADE THE FOLLOWING:

## O R D E R

Issue Rule

2 Insofar as the fifth respondent is concerned who have already filed statement of objections and also an affidavit responding to the averments in the writ petition, particularly, vis-à-vis prayer and relief sought for against the fifth respondent, Sri Anand Grover, learned counsel appearing for the petitioner submits that the petitioner is more than happy with the contents of the affidavit placed before the court by the fifth respondent and insofar as the fifth respondent is concerned, if the fifth respondent should adhere to the statement made on oath in the affidavit placed before the court, no further relief is pressed before the court against the fifth respondent.

3 Sri Venkatesh Dodderi, learned Additional Government Advocate appearing for the first respondent - State of Karnataka, very gracefully submits, based on instructions that the learned Additional Government



Advocate has just received, during the pendency of the hearing of this case that the State Government has neither incurred any expenditure for sponsoring the event nor do they participate nor would they in any manner sponsor or participate in the event neither hitherto nor in future also.

4. Sri Ambaji Rao Najre, learned central government standing counsel appearing for the respondents 2 and 3 submits that the counsel is awaiting instructions from his clients for filing their statement of objections to the writ petition and prays for a week's time.

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5. In this writ petition presented as a public interest litigation writ petition by M/s. The Institute of Public Health, claiming to be a society registered under the provisions of the Karnataka Societies Registration Act, 1960 and represented by its faculty member Dr Upendra Bhojani, resident of No 12-C-04, Nandi Gardens, Phase-2, J P Nagar, Bangalore-62, who has sworn to an affidavit in

20/07/2022

support of the contents of the writ petition. The sought for

the following main prayer and further interim prayer:

*WHEREFORE in light of the above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:*

- A. To direct the 4<sup>th</sup> Respondent Tobacco Board to withdraw all financial sponsorship or any sponsorship of a non-monetary nature, made to the GTNF 2010 from the 4<sup>th</sup> - 8<sup>th</sup> October 2010 at Bangalore; or if already made, direct it to obtain a refund of the said contribution;*
- B. To restrain all the Board members, Directors, Managers or any other person employed with the 4<sup>th</sup> Respondent Tobacco Board from participating in the GTNF 2010, attending the event or taking the delegates to visit the tobacco growing areas and auction platforms in Karnataka or participating in it in any other manner;*
- C. To restrain the Respondent No. 1 - 3 authorities or any employees or officers of the Respondent No. 1-3 from participating in the GTNF 2010 or attending the event as resource persons, invitees, at the inaugural ceremony or in any other capacity or provide any form of support to the GTNF 2010;*
- D. To direct the Respondent No.1 State Government of Karnataka to monitor the GTNF 2010 and to ensure that it is conducted with full compliance of all the*



provisions of the COTPA and the Rules thereunder, which include a complete ban on smoking in the Respondent No.5 premises during the event, a ban on advertising, banners or promotion of cigarettes and tobacco products during the event, and the compulsory putting up of all mandatory health warnings at the premises and to submit a report on compliance of the same to this Hon'ble Court:

- E. To direct the Respondent No.5 to exhibit all the mandatory health warnings at its premises during the GTNF 2010 to the effect that cigarette smoking is injurious to health as required under COTPA and to ensure that there are no sales of cigarettes on the premises during the GTNF 2010 conference and to disseminate the provisions of COTPA to all participants.
- F. To direct the Respondent No.5<sup>22</sup> to have unrestricted public entry for the GTNF 2010 so as to permit all interested members of the public to attend any/all sessions at the GTNF 2010 and to permit press coverage of the same.
- G. To direct the Respondents No.1 to 4 not sponsor or participate in any tobacco industry related event in the future;
- H. To direct the Respondents Nos.1-4 to prepare a protocol on all events by the tobacco industry, including putting in place a comprehensive ban on all



international tobacco industry across India.

1. To direct the Respondents Nos. 1 to 4 to formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry;
2. Pass any order as this Hon'ble Court deems fit in the facts and circumstances of this case in the interest of justice and equity."

#### INTERIM PRAYER

That pending the disposal of this petition it is prayed that this Hon'ble Court may be pleased to pass interim order:

- Directing the 4<sup>th</sup> Respondent Tobacco Board to stay all financial sponsorship or any sponsorship of a non monetary nature to the GTNF 2010 from the 4<sup>th</sup> - 8<sup>th</sup> October 2010 at Bangalore;
- Restraining all Board members, Directors, Managers or any other person employed with the 4<sup>th</sup> Respondent Tobacco Board from participating in the GTNF 2010, attending the event or taking the delegates to visit the tobacco growing areas and auction platforms in Karnataka or participating in it in any other manner;
- Restraining the Respondent No. 1 & 3 authorities or any employees or officers of



*the Respondent No. 1-3 from participating in the GTNF 2010 or attending the event as resource persons, invitees, at the inaugural ceremony or in any other capacity or provide any form of support to the GTNF 2010;*

- Directing the Respondent No.1 State Government of Karnataka to monitor the GTNF 2010 and to ensure that it is conducted with full compliance of all the provisions of the COTPA and the Rules thereunder, which include a complete ban on smoking in the Respondent No.5 premises during the event, a ban on advertising, banners or promotion of cigarettes and tobacco products during the event, and the compulsory putting up of all mandatory health warnings at the premises and to submit a report on compliance of the same to this Hon'ble Court; in the interest of justice and equity."*

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6. The sum and substance of the writ petition is that certain international tobacco event has been organized by the Global Tobacco Networking Forum, 2010 and is scheduled to take place from 4 to 8<sup>th</sup> October, 2010 at Bangalore, the capital city of state of Karnataka; that in such an intended event, the fourth respondent tobacco board, a body constituted under the provisions of Tobacco



Board Act, 1975 [for short, the Act] has evinced considerable interest not only in participating in the event but also in promoting the event by allowing its logo representing the 4<sup>th</sup> respondent board to be used as part of the sponsors of the event and it is also in fact informed the general public that the board is sought to incur an expenditure to the extent of a sum of Rs 3,26,620/- to meet a part of the expenditure for transportation of the delegates to the tobacco growing areas and tobacco auction platforms in Karnataka, in terms of its response dated 2-8-2010 [Annexure-H to the writ petition] to a query on behalf of the petitioner organization made under the provisions of Right to Information Act, 2005 that the participation and sponsoring of such an event and further incurring expenditure for such purpose by fourth respondent-board to please the delegates, who may come from foreign countries and to incur expenditure for their benefits would work at cross purposes not only with the provisions of Section 5 of the



Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act, 2003 [for short: COTPA] and so also opposed to the very object and purpose of the parliament having enacted such a law, but more importantly, being guided by the resolution passed by the 39<sup>th</sup> World Health Assembly in its 14<sup>th</sup> plenary meeting held on 15-5-1986 and India being a signatory and participant, the very provisions of the law being to provide statutory recognition in this country to the intent, content and the purpose of sub-article (4) of Article 13 of WHO Framework Convention on Tobacco Control; that the entire object of Article 13 is to curb advertising, promotion and sponsorship of tobacco in any form or variance, which is recognized by the WHO as deleterious and harmful to human being and health of individuals and therefore such active role and participation by a statutory board like the fourth respondent is apart from violation of such provisions, sends a wrong signal and

message to the people that though the state is still encouraging such industry and such products that it definitely affects the public interest at large and therefore the participation of fourth respondent board and therefore the writ petition is being filed on behalf of the general public in a representative capacity and has sought for the relief as earlier indicated.

7. Notices had been issued to the respondents numbering five - first respondent being State of Karnataka, second respondent Union of India, Ministry of Commerce, third respondent Union of India, Ministry of Family Welfare, fourth respondent Tobacco Board and fifth respondent ITC Royal Gardenia.

8. Appearing for the petitioner, submission of Sri Anand Grover, is that the matter had been moved for passing of orders on the interim prayer, as the proposed international event is fast approaching and until and unless a positive order restraining the fourth respondent-



board is passed by this court, the very purpose and object of filing of this writ petition would be defeated and therefore orders should be passed etc. on the merits of the matter and has prayed for passing an order on the interim prayer.

9. After service of notice on the respondents, all respondents are represented through counsel. State government is represented by Sri Venkatesh Dodderi, learned AGA, the union of India is represented by Sri Ambaji Rao Najre, learned central government standing counsel, fourth respondent is represented by Sri Kalyan Basavaraj, Assistant Solicitor General, and fifth respondent-hotel, where the convention is scheduled to be held, is represented by Sri K G Raghavan, learned senior advocate.

10. We have heard learned counsel for the petitioner and the learned counsel for the respondents. We have been taken through the petition pleadings and also the

statements of objections filed on behalf of the fourth and the fifth respondents.

11. The stand of the fifth respondent has already been noticed above. There is no opposition in writing as of now on behalf of the Union of India, except for seeking time for filing objections to the main petition, for which time has already been given.

12. In so far as the fourth respondent board is concerned, Sri Kalyan Basavaraj, learned ASG, has put forth a vehement response for passing any orders, particularly for restraining the board, as is sought for by the petitioner. Sri Basavaraj by drawing our attention to Section 8 of the Act, would submit that the proposed action on the part of fourth respondent board is not only participating actively in the event but also to incur some expenditure by the board to guide the delegates in and around areas growing quality and virgin tobacco within the state of Karnataka, particularly in Hunsur taluk and



also to take them to auction platforms, where tobacco grown in the state is sold, as sale of tobacco is not regulated under the provisions of the Act and that it is fully in consonance with the object of the Act with the purpose for which the fourth respondent board is created, to promote tobacco industry in the country and therefore if an order, as is sought for by the petitioner, should be granted, it will amount to restraining fourth respondent board from fulfilling its statutory obligations, and urges for dismissal of not only the interim relief but also the main petition itself.

13. Sri Kalyan Basavaraj would further draw our attention to the very provision of COTPA and submits that India being a signatory to the convention, has already performed its part of the obligations by legislating on the subject and that it is now governed by the provisions of this Act and until and unless there is a prohibition under this Act on the fourth respondent-board from indulging in activities such as participation or sponsoring or extending

some courtesy to the delegates attending the conference, an order of the nature as is sought by way of interim prayer cannot be granted; that there is no *prima facie* case for the relief sought for and therefore the prayer should be rejected.

14. One another objection raised on behalf of the fourth respondent-board is that the petition is bad for non-joinder of necessary parties; that the entire event is being organized at the instance of the sponsor the *Tobacco Reporter*; that without impleading it as a party to the present writ petition, the relief sought for against the central and state governments, the fourth respondent-board and the hotel where the conference is to be held, is a petition suffering from such defects and the petition should be dismissed on this ground also.

15. Sri Anand Grover, learned counsel for the petitioner would reply by pointing out that there is no need for the petitioner to implead the sponsor, as no relief is sought



for against the sponsor; that the relief sought for in the petition is as of now confined to some action on the part of the fourth respondent board and the state government, only to restrain them from actively participating in or encouraging the event and that relief is sought for as it could amount to a positive violation of the statutory provisions and the Articles of Convention and if even assuming that it is not a positive violation, it amounts to a tacit approval of the promotion of tobacco products being marketed etc.

16. Learned counsel for the petitioner relied on three decisions viz., 1) *GODAWAT PAN MASALA PRODUCTS IP LTD vs UNION OF INDIA* [AIR 2004 SC 4057] 2) *APPAREL EXPORT PROMOTION COUNCIL vs A K CHOPRA* [AIR 1999 SC 625] and 3) *VISHAKA vs STATE OF RAJASTHAN* [AIR 1997 SC 3011] to submit that even in the absence of any statutory provision, the provisions of an international convention are as good in any member country and in either view of the statutory





provisions under the COIPA or under the Convention this is a fit case for grant of relief.

17. We have bestowed our consideration to the submission made at the Bar. Perused the pleadings and the supporting materials placed before us and also gone through the statutory provisions.

18. We had expressed our reservation about the *bona fides* of the petitioner and to establish the *bona fides*, the petitioner has placed before the court an affidavit sworn to by Dr Upendra Bhujani, which, *inter alia*, indicates that the petitioner has its object of promoting public health; that it is also imparting coaching and guidance to research scholars aspiring for diploma/degree in public health in collaboration with institute of tropical medicine, Antwerp, Belgium; that it is research oriented organization, concerned for public health; that it is also receiving aid for its research activities not only from the state and the central governments but also from the world



health organization and Sir Ratan Tata Trust, that the petitioner is a very reputed organization actively involved in the public service; that its *bona fides* can never be suspected etc.

19. Be that as it may, for our satisfaction and to err on the safer side than to leave it, we insisted that the petitioner should deposit certain amount before this court during the pendency of the petition and as learned counsel for the petitioner has pleaded considerable difficulty in depositing the amount which we initially indicated, we have scaled down to the minimum requirement of directing the petitioner to deposit a sum of Rs 25,000/- [Rupees twenty-five thousand only] before this court within two weeks from today. The amount to be in deposit during the pendency of this petition and this court if satisfied that the petition is being prosecuted *bona fide*, the amount can be ordered to be refunded to the petitioner after the disposal of the writ petition.

20. That apart, we find the nature of the relief sought for which is for a restraint order, normally a relief of this nature is in a civil suit in the nature of temporary injunction, which, though no doubt is seldom granted in writ petitions and a relief in the nature of temporary injunction to restrain a public body though not impossible of granting, is a rare relief to be given and we, for this purpose, have thoroughly examined the matter not only on the *bona fides* of the petitioner but also on the merits of the matter.

21. We find the petitioner has sufficient locus to espouse a cause, in the sense to campaign for highlighting the deleterious effects of tobacco products which is a medically recognised reality which has reached to the level of even this court being in a position to take judicial notice of the harmful effects of use of tobacco products and particularly such being also the objective of the provisions of COTPA.

22. The annexures produced along with the writ petition, wherein an extract from the website of the



organizers – the global tobacco networking forum – has, along side indicated the names and logos of the sponsor wherein it figures the logo of fourth respondent board, within which also inscribed the name of the board. This is very obvious that the fourth respondent board is a sponsor of the event as proclaimed by the organizers.

23. A public body like the fourth respondent board, which is undoubtedly 'state' within the meaning of Article 12 of the Constitution of India and its activities are definitely amenable for judicial review by this court, if there is something amiss in their part.

24. While Sri Kalyan Basavaraj, learned counsel for the fourth respondent-board, has put up a spirited defence to oppose grant of interim prayer, we find sufficient *prima facie* case in the present case, as the object of the board, no doubt, in terms of Section 8 is one to promote tobacco industry and related industry, but that object, while definitely can be pursued and achieved so long as the

fourth respondent-board exists and the statute remains on the statute book. However, that promotion should be within the permitted level and should not work at cross-purposes or variance with any other statutory provision, more so in the present situation, COTPA.

25. We find that an activity such as participating in an international conference and also providing financial assistance to members/delegates participating therein and to take them around on a guide by the fourth respondent-board to make them privy to tobacco growing areas and market platforms, is an activity which, even if does not amount to directly promoting and advertising cigarettes and other tobacco products, is an indirect support extended to manufacturers of cigarettes and other tobacco products, as is obvious from the web-site of the organizers, as many of the sponsors are cigarette manufacturers of leading brands across the world. The fourth respondent-board keeping company with them itself may amount to conveying a message that the fourth



respondent-board is in league with such companies in promoting their products, which is most undesirable, if one should go by the provisions of Section 5 of COTPA and Article 13 of the WHO Convention on Tobacco Control.

26. That definitely is an activity, which, in our opinion, the fourth respondent-board should avoid and there is considerable force in the submission made on behalf of the petitioner that the board should be prevented from indulging in such an activity.

27. That apart, while the board can continue to promote the tobacco industry in other areas, but not related to human consumption of tobacco leading to the affectation of the health of general public, which activity alone is sought to be regulated and prevented under COTPA. To that extent, the relief sought for in this writ petition and the interim prayer are definitely one which come within the scope of a writ to restrain the fourth respondent-board from indulging in such acts.

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28. Therefore, we are of the view that the petitioner has balance of convenience in its favour and while an order of this nature cannot in any way affect the functioning of the board to carry on with its object under the Act and on the other hand, if the board should participate and carry out with its intention to actively participate in such an international conference and if had made any commitment for incurring any expenditure as part of the conference, they are to be restrained as the very participation is not a desirable act and therefore even the aspect of irreparable loss and injury, which will be to the purpose and object of the Act, it will be against public health, which cannot be compensated later, it is better to prevent the same and therefore on all three aspects of *prima facie* case, balance of convenience and irreparable hardship and injury, we are of the opinion that this is a fit case for grant of interim prayer as is sought for by the petitioner.



Therefore, the fourth respondent board is restrained from actively participating in the conference in question. It is further directed not to incur any expenditure either by way of sponsorship or for any other enabling activity for the benefit of the participants in the intended conference to be held at ITC Royal Gardenia Hotel, Bangalore from 4 to 8<sup>th</sup> October, 2010 and if any money has already been committed or incurred or spent for such purpose, to make efforts to get it back. This order is subject to the final result of this writ petition. The petitioner to deposit the amount within two weeks from today.

30. Registry is directed to furnish a copy of this order, free of cost, to the learned counsel appearing for the fourth respondent-board

**COPY**

B. Narayanaiah  
Assistant Registrar  
High Court of Karnataka  
Bangalore-560 001  
22/9/10

83/-  
**JUDGE**

G. S.  
JUDGE

1002-8-10  
23/9/10

- a) The date on which the application was made ..... 23/9/10  
b) The date on which charges and addl charges, if any are called for .....  
c) The date on which the charges and addl charges if any are deposited .....  
d) The date on which the copy is ready ..... 23/9/10  
e) The date at which the copy is ready for delivery .....  
f) The date on which copy is delivered to the application ..... 23/9/10

TRUE COPY  
H. R. H. H.  
Section Officer  
High Court of Karnataka  
Bangalore - 560 001  
23/9/10