Item No. 04 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 433/2015

(With report dated 20.08.2020)

Doctors For You Applicant(s)

Versus

MoEF & CC & Ors. Respondent(s)

Date of hearing: 09.09.2020

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Applicant(s): Mr. Jaideep Singh, Advocate
Respondent(s): Mr. Raj Kumar, Advocate for CPCB
Mr. Mukul Singh, Advocate for MoEF&CC
Mr. Ravi Shankar S.S., Advocate for R-6
Mr. Anand Varma, Advocate for R-7

ORDER

1. This application was filed on 23.09.2015 with a prayer to direct regulation of disposal of cigarette and bidi butts, apart from prohibiting consumption of tobacco in public places. Notice was issued on 28.09.2015 to the Ministry of Environment, Forest & Climate Change (MoEF&CC), Ministry of Health and Family Welfare, Ministry of Commerce and Industry, Central Pollution Control Board (CPCB), Tobacco Board and other respondents.

2. The response of MoEF&CC was that cigarette and bidi butts were not listed as hazardous. The cellulose acetate, which is prepared by converting cellulose into an acetic acid ester, is essentially a

biodegradable substance. However, the biodegradability of cellulose acetate is not necessarily satisfactory in practice. Any individual issues are to be handled at the level of the District Magistrate or the Municipal Authority.

3. The Federation of All India Farmers Association also filed a reply opposing the application. The Verve Foundation Trust filed an application for impleadment to support the applicant. The Tobacco Institute of India has also opposed the application. The All India Bidi Industry Federation also filed a reply opposing the application.

4. The Ministry of Health in its response submitted that Tobacco was detrimental to health. The cigarette and bidi butts were not biodegradable. There was no thorough research on the effect of such butts. The Ministry of Health has enacted the Cigarettes and other tobacco products (Prohibition of Advertisements and Regulations of Trade and Commerce Production, Supply and Distribution Act 2003 (COTPA) and also framed rules. The Ministry has also launched the National Tobacco Control Programme (NTCP) with the aim and objective of creating awareness about the harmful effect of tobacco consumption, reducing production and supply of tobacco products, ensuring effective implementation of the provision of COTPA, 2003 and helping the people to quit tobacco use through Tobacco Cessation Centers. The WHO Framework Convention on Tobacco Control (FCTC) is created to implement methods to reduce tobacco consumption and protecting present and future generations from devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. The salient features of FCTC are as follows:

"

1. ***Measures relating to the reduction of demand for tobacco (Article 6-14):***

i) *Price and tax measures for reducing tobacco use.*
ii) *Non price measures to reduce the demand for tobacco namely:*

- *Protection from exposure to tobacco smoke*
- *Regulation of contents of tobacco products*
- *Regulation of tobacco product disclosures*
- *Packing and labeling of tobacco products*
- *Education , communication , training and public awareness*
- *Tobacco advertising promotion and sponsorship:*
- *Demand reduction measures concerning tobacco dependence and cessation*

2. ***Measures relating to the reduction of supply of tobacco (Articles 15-17)***

- *Preventing illicit trade in tobacco products:*
- *Prohibiting sales to and by minors:*
- *Supporting economically viable alternative activities to tobacco*
- ***Protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture**."*

5. Inter-Ministerial Committee of Secretaries (COS) at the national level has been constituted to review and develop a comprehensive policy on tobacco and related issues. As per the GATS-2 India 2016-17, the estimated number of tobacco users India are 26.7 crores with 16.73 crores users of only smokeless tobacco, 6.74 crores only smokers and 3.21 crores users of both smoking and smokeless tobacco Overall tobacco use among males was 48% and 20% among females as per the Global Youth Tobacco Survey, 2009, 9% students in the age group 13-15 use smokeless tobacco products with figures of 11% among boys and 6% among girls.

6. The Ministry of Health and Family Welfare in consultation with the National Institute of Health and Family Welfare (NIHFW) has compiled a Health Report on the contents and harmful effects of consumption of gutkha, chewing-tobacco pan masala and similar smokeless-tobacco-

manufacturer in the country. The major carcinogens in smokeless tobacco are N-Nitrosamines (TSNA) and there is no safe level of this chemical that has been ascribed so far.

7. Smokeless tobacco is being used by about 300 million or about 26% of the Indian population and majority of them spit it in public places Global Adult Tobacco Survey (GATS), India: Ministry of Health, Government of India, 2009-2010. Spitting of such saliva in a public place contributes in spreading of several communicable diseases e.g. Tuberculosis, H1N1 (Swine Flu), Avian-Flu, Pneumonia and gastro-intestinal-diseases, thus endangering the life of persons visiting a public place. **Tsuge K, Kataoka M, Seto Y. Cyanide and Thiocyante levels in blood and saliva of healthy adult volunteers. J Health Sci 2000; 46 (5): 343-50).**

8. The Food safety and Standards Act 2006 (enacted by the Government of India with the objective to fix food standards and regulate/ monitor the manufacturing, import, processing, distribution and sale of food to ensure safe and wholesome food to the people) has defined the word food as any substance whether processed, partially processed or unprocessed which is intended for human consumption. Further in the case of **Godawat Pan Masala Products I.P Ltd. & Another v Union of India & Others, 2004 7 SCC 68,** the Hon'ble Supreme Court has held that pan masala and gutkha are food products. The Hon'ble Allahabad High Court in **Manohar lal V State of U.P**, Criminal Revision No. 318 of 1982 and in **Khedan Lal And Sons Vs State of U.P and Ors**, 1980 CriLJ 1346 has held chewing tobacco as an article of food.

9. Based on the aforementioned Judgments, the provisions of the Food safety & standards Act 2006 and the Regulation 2.3.4, the Ministry issued letters dated 08.05.2012, 27.08.2012, 21.11.2012 and 06.08.2014 to the principal Secretaries (Health) , Chief Secretaries and Chief Misters of all States/UTs, to consider issuing necessary orders for restricting the sale of food items having tobacco and nicotine as their ingredients such as gutkha, pan masala (containing tobacco and nicotine), zarda and flavoured/scented chewing tobacco under Regulation 2.3.4 Further, in the year 2016, letters were issued to Chief Secretaries of all States except Bihar, Karnataka, Mizoram, Kerala and Madhya Pradesh to pass necessary orders in Compliance of the Hon'ble Supreme Court order dated 23.09.2016 and ensure that the manufacture, storage, distribution or sale of gutka and panmasala (containing tobacco or nicotine) and any other products marketed separately having tobacco or nicotine in the final product by whatever name called, whether packaged or un-packaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer is prohibited in the jurisdiction of the respective States. The Ministry is making earnest efforts to curb tobacco use in the country. The Ministry of Health and Family Welfare is in agreement with the applicant that an Inter -Ministerial /Departmental Committee should be constituted to consult at the national level for conducting an **impact study** of discarded cigarette and bidi butts and spitting of tobacco products in public places. The inter -Ministerial Departmental Committee based on the findings of the impact study can frame a **comprehensive policy** on discarded cigarette and bidi butts and for prohibiting spitting of tobacco products in public places.

10. Vide order dated 12.04.2019, the Tribunal directed that a study be conducted by the Indian Institute of Toxicology Research (IITR) on the question whether the cigarette and bidi butts fall within the category of toxic waste or not. The CPCB assigned the project to the IITR on 30.10.2019. On 03.02.2020, the Tribunal was informed that the IITR will give its report by 20.02.2020.

11. Accordingly, the CPCB has filed its report on 20.08.2020 *inter-alia* as follows:-

> ***"2.0 Action Taken Report: -***
>
> *a) In compliance of aforesaid direction of Hon'ble NGT, IITR-Lucknow submitted the report on "**Whether cigarette and bidi butts fall within the category of toxic waste or not** " on 3rd March,2020.*
>
> *b) Report was examined by CPCB and it was observed that it did not include the following*
>
> *- Analysis of the parameters as per provisions of schedule II of Hazardous and other wastes (management and transboundary movement) Rules, 2016*
>
> *- It did not confirm whether cigarette and bidi butts fall within the category of toxic waste or not.*
>
> *Accordingly, email dated March 12, 2020 and March 19, 2020 (Annexure I and Annexure II) was written to IITR.*
>
> *c) IITR vide letter dated July 09, 2020 submitted the revised report on the matter. However, the report still did not include:*
>
> - *Analysis of the parameters as per provisions of schedule II of Hazardous and other wastes (management and transboundary movement) Rules, 2016.*
> - *Conclusion regarding toxicity of cigarette/ bidi butts.*
>
> *Vide e-mail dated 14.08.2020, IITR was requested to include the above (Annexure III).*
>
> *d) IITR has submitted the revised report vide e-mail dated August 17, 2020. The report is placed at Annexure IV. As per the IITR report, following are the conclusion:*

i. *The analysis of the cigarette/bidi butts reflect that as per* ***the concentration of various parameters analyzed are lower than the prescribed limits and will not be toxic to human & environment.***

ii. ***Cellulose Acetate is a major component of the cigarette/bidi butts and its degradation studies show that it will persist for a longer duration. The degradation studies under natural environmental conditions and laboratory simulating conditions will be required to conclude safety/toxicity of cigarette butts to further correlate with human health risk assessment."***

12. The conclusions in the report are as follows:

"The level of individual chemical analytes in TCLP leachates for Class A and Class C are reported as the mean concentration of triplicate for each sample in mg/L or Below Detection Limit (BDL)

Class A:

- *The class A chemicals concentration in unburnt cigarette butts were detected in the concentration range of BDL-0.001 mg/L for mercury, BDL-1.071mg/L for copper and BDL-0.263 mg/L for nickel, while all other chemicals were BDL, whereas in unburnt bidi butts all were BDL. (Annexure-I)*
- *The class A chemicals in burnt cigarette butts were detected in the range of BDL-0.028 mg/L for cadmium, BDL-0.062 mg/L for selenium, BDL-0.065 mg/L for endosulfan, BDL-2.808 mg/L for copper, BDL-0.087 mg/L for nickel, BDL-0.016 mg/L for polychlorinated biphenyls whereas in burnt bidi butts were in the range of 0.022-0.028 mg/L for cadmium, BDL-0.008 mg/L for selenium, 0.084-0.115 mg/L for copper (Annexure-II)*
- *The levels found for class A chemicals (reported in the Annexure I and II) were below their respective concentration limit, as per schedule II 2016 except endosulfan was found higher in one brand of cigarette*

Class C:

- *The class C chemicals in unburnt cigarette butts were detected in the concentration range of BDL-0.012 mg/kg for organotin compounds and BDL-0.024 mg/kg for organo nitro and nitroso compounds, whereas in unburnt bidi butts were in the range of 0.039-0.041 mg/kg for organotin compounds. (Annexure-III)*
- *The class C chemicals in burnt cigarette butts were in the range of BDL-0.323 mg/kg for aromatic compounds, BDL-0.025 mg/kg for organotin compounds, BDL-0.067 mg/kg*

for organo nitro and nitroso compounds and BDL-0.009 mg/kg for phenanthrene whereas in burnt bidi butts were in the range of BDL-0.035 mg/kg for aromatic compounds and 0.122-0.173 mg/kg for organo nitro and nitroso compounds. (Annexure-IV)

- *The levels found for class C analytes (reported in the Annexure III and IV) were below their respective concentration limit as per schedule II 2016.*

Other additional chemicals analysed for unburnt and burnt cigarette and bidi butts are also listed, separately in (Annexure V).

The level of class A and C chemicals listed in schedule II is lower than the prescribed limit in the small sample size. The cigarette butt material is non-degradable, and this may be considered during the formulation of the waste disposal plan.

The levels of chemicals listed in class 'A' of schedule II 2016 Government of India Ministry of Environment, Forest and Climate Change were either below the level of detection or many fold lower than the threshold value, except the endosulfan (in one brand). The levels of chemicals listed in class 'C' of Schedule-II 2016 Government of India Ministry of Environment, Forest and Climate Change were either below the level of detection or many fold lower than the threshold value. In summary, ***the levels of class 'A' and 'C' chemicals listed in Schedule-II 2016 Government of India Ministry of Environment, Forest and Climate Change are lower than the prescribed limits under the experimental conditions with limited sample size. The analysis reflects that the concentrations detected will not be toxic to the human and environment. Cellulose acetate is a major component (95%) of the cigarette butts along with the wrapping paper and rayon. In general, the toxicity data arc not available for cellulose acetate. Whatever studies carried out so far, reported cellulose acetate nontoxic up to 5000 mg/ Kg body weight in subchronic studies of 96 days through oral administration in rat models [2]. The degradation studies carried out on cigarette butts shown only 37.8% degradation in two years in the soil under ambient conditions [1]; hence it will persist in soil for a longer duration. The data are not available on the cigarette butts or cellulose acetate (a major component of cigarette butts) mediated human health risk assessment and toxic responses, and response on microflora in the soil. The degradation studies under natural environmental conditions and laboratory simulating conditions will be required to conclude the safety/ toxicity of cigarette butts to further correlate with human and environmental health risk assessment. Recycling of cellulose acetate after recovery from the cigarette butts may be suggested as one among the***

immediate solution to the problem until the degradation and safety data are generated.”

13. In view of above, while tabaco is undoubtedly harmful and the concerned authorities are seized of the remedial action, the Tribunal is mainly concerned with the manner of disposal of cigarette/bidi butts. An expert study has been conducted. We do not find any valid reason to reject the expert report. Accordingly, we direct that the CPCB may lay down guidelines for disposal of cigarette/bidi butts, in the interest of environment, within three months.

The application is disposed of.

A copy of this order be forwarded to the CPCB by e-mail for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 09, 2020
Original Application No. 433/2015
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