

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.119 OF 2014

Anurag Kashyap and others
versus
Union of India and others

...Petitioners

...Respondents

...

Dr.Birendra Saraf, Sr.Advocate with Mr.Ameet Naik, Madhu Gadodia and Mr.Vaibhav Bhure i/by Naik Naik & Co. for Petitioners.

Mr.Parag Vyas for Respondent No.1-UoI.

Mr.Sanjay Kadam i/by Kadam & Co. for Respondents 3 and 4.

...

**CORAM: MOHIT S. SHAH, C.J. &
M.S.SANKLECHA, J.**

DATE : 7 MAY 2014

P.C.:

In this petition under Article 226 of the Constitution, the petitioner No.1- Film writer, director and producer, petitioner No.2- cinematograph film production company and petitioner No.3- another cinematograph film production company, who are all co-producers of the film 'Ugly', have challenged the constitutional validity of Rules 4(6), 4(7) and Rule 8 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules 2004 as amended in 2012. The basis of the challenge is that the same as ultra vires the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

2. Impugned rules in so far as relevant for the purpose of this petition are as under:-

4. *Prohibition of advertisement of cigarettes and other tobacco products.-*

(1) to (5)

(6) *No individual or a person or a character in films and television programmes shall display tobacco products or their use:*

Provided

(7) (a) & (b)

(c) *Whenever such scenes are shown in a film or television programme, an anti-tobacco health warning scroll will be continuously displaced on the screen starting a minute before the scene and would be continuously displayed until one minute after the scene:*

Provided also that there shall not be any display of brands of tobacco products or tobacco product placement in any form;

Provided also that close-ups of cigarette packages or tobacco products shall not be permissible and such scenes shall be edited by the producer or distributor or broadcaster prior to screening in cinemas or theatres or airing on television.

8. *Health spots, message and disclaimer in new films and television programmes.-*

(1)

(a) & (b)

(c) *anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the film and television programme;*

3. Learned counsel has invited our attention to the communication dated 2 August 2012 (Exh.C) from the Director (Films), Ministry of Information & Broadcasting, to CEO, Central Board of Film Certification, Mumbai on the subject "Smoking in films", which reads as under:-

Madam,

Please refer to your letter dated 15.5.2012 on the issue of depiction of smoking in films.

2. *The practical difficulties being faced by the film industry in implementation of the Health Ministry's notification dated 27.10.2011 have been discussed at various levels between this Ministry of Health & Family Welfare (MoH&FW) including a discussion held under the Chairmanship of Hon'ble Minister of Health & Family Welfare where both Secretary, I & B and Secretary, Health were present. Ministry of Health & Family Welfare is in the process of carrying out the modifications to the notification dated 27.10.2012.*

3. *In the meantime, CBFC is requested to advise the filmmakers to ensure the following:*

(i) A 20 second anti-smoking message as approved by Ministry of Health with voice over of one of the actors who is seen smoking in the film to be displayed at the beginning and in middle (after interval) of the film.

(ii) A static anti-smoking message to be displayed for the duration of the smoking scene in the film.

4. After the said letter there was amendment to 2004 Rules by Notification dated 21 September 2012 containing amended Rules of 2012 with effect from 2 October 2012.

5. Learned counsel submits that thereafter by the impugned communication dated 20 September 2013, CEO of the Central Board of Film Certification has informed the petitioners requiring the petitioners to do the following in accordance with the aforesaid Notification dated 21 September 2012:-

“(a) a strong editorial justification explaining the necessity of the display of the tobacco products or their use in the film, to the Central Board of Film Certification;

(b) anti-tobacco health spots, of minimum thirty seconds duration each at the beginning and middle of the films and television programmes;

(c) anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the film and television programme;

(d) an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the film and television programme.

We regret to inform you that censor certificate to your film “Ugly” (Hindi) cannot be granted unless the guidelines as requested by the Ministry of Health and Family Welfare's Notification No.G.S.R.708(F) dated 21-9-2012 are followed.”

6. Learned counsel submits that while the challenge to the constitutional validity of the impugned Rules may be considered at the time of final hearing, atleast direction (c) quoted above as well as the relevant impugned Rules being Rule 4(7)(c) and Rule 8(1)(c) are required to be stayed during pendency of the petition. Petitioners, without prejudice to rights and contentions in this petition, are ready to comply with other Rules requiring the petitioners to give a strong editorial justification explaining the necessity of the display of the tobacco products or their use in the film, to the Central Board of Film Certification, anti-tobacco health spots, of minimum thirty seconds duration each at the beginning and middle of the films and an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the film and that should be considered sufficient safeguard for preventing ill-effects of tobacco use. It is submitted that anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products would unnecessarily disturb the viewers attention and destroy the enjoyment of the movie as a piece of art.

7. Learned counsel for the Union of India has opposed grant of any interim or ad-interim relief on the ground that the judgment of the Delhi High Court in Mahesh Bhat v/s U.O.I. & ors striking down the Rules came to be challenged before the Supreme Court and operation of the order of Delhi High Court has been stayed by order dated 27 April 2012 of the Supreme Court.

8. Learned counsel further invited our attention to the order dated 22 July 2013 of the Supreme Court, in Civil Appeal Nos.5912-5913 of 2013, setting aside the interim orders passed by this Court in Writ Petition No.6151 of 2005 and particularly the following observations made by the Supreme Court at the conclusion of the said order:-

“ We also make it clear that as a sequel to setting aside of the interim order passed by the High Court, the Central Government and the Governments of all the States shall be bound to rigorously implement the provisions of the 2003 Act and the 2004 Rules as amended from time to time.”

9. It is, therefore, submitted that since what the petitioners are challenging is the provisions of 2004 Rules as amended from time to time, any interim or ad-interim stay of any part of the impugned Rules would run counter to the aforesaid order passed by the Supreme Court in Civil Appeal Nos.5912-5913 of 2013.

10. Having heard the learned counsel for some time, we are prima facie of the view that there is substance in the submission being made on behalf of the respondent-authority that grant of any interim or ad-interim stay of the operation of Rule 4(7)(c) or Rule 8(1)((c) would come in the way of the Central Government and the State Government implementing the provisions of 2004 Rules as amended from time to time and such interim or ad-interim order cannot be passed.

11. However, it is clarified that this order shall not come in the way of the petitioners making representation to the Central Government for modification/deletion of Rules 4(6), 4(7)(c) and Rule 8(1)(c) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004.

12. If the petitioners make such representation, a copy of the same shall be served upon the learned counsel for respondent No.4 and same may be considered as expeditiously as possible.

CHIEF JUSTICE

(M.S.SANKLECHA, J.)